TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 124.

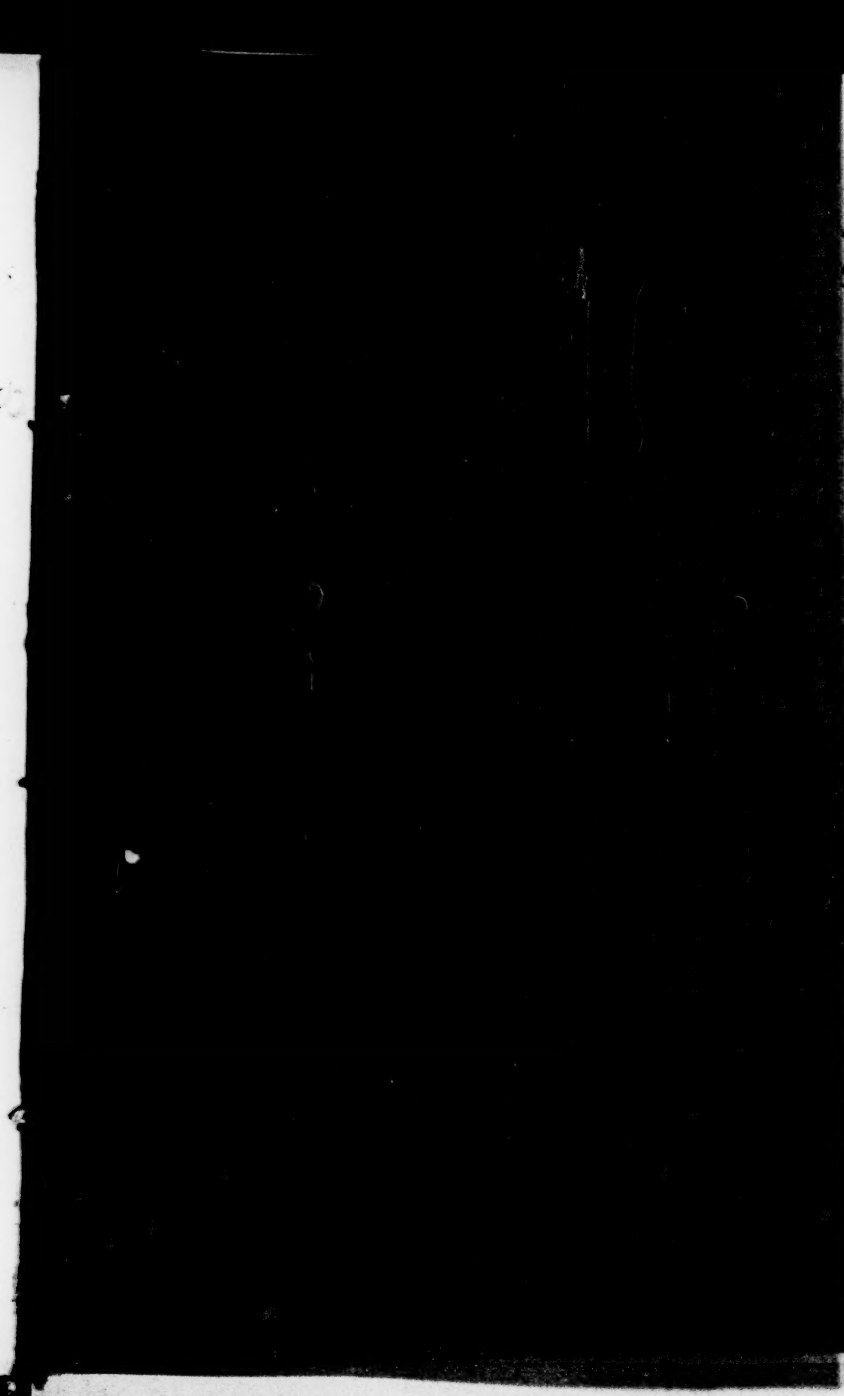
ARISTIDES DOGGETT, RECEIVER, &c., APPELLANT,

vs.

THE FLORIDA RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED JUNE 9, 1876.



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1 In the fifth circuit court of the United States for the northern district of Florida.

To the judges of the United States circuit court for the northern district of Florida:

Francis Vose, a resident and citizen of the State of New York, William H. Wagner, a resident and citizen of the State of South Carolina, and Aristides Doggett, receiver in chancery, under decree of this honorable court, bring this their bill of complaint, as well for the said Vose and the said Wagner as for all others holders of the first-mortgage bonds of the Florida Railroad Company, against the said Florida Railroad Company, a corporation created by the act of the general assembly of the State of Florida, located within and a citizen of the same.

And thereupon your orators complain and say that on the third day of November, in the year of 1870, the said Francis Vose filed his bill
2 of complaint in this honorable court against Harrison Reed and others, the trustees of the internal improvement fund of the State of Florida, and others, in which he complained he was the owner and holder of one hundred and ninety-five first-mortgage bonds of the said the Florida Railroad Company, issued under the provisions of an act of the general assembly of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," passed January 6th, 1855. That the said company failed to provide the interest on the bonds issued by it, as aforesaid, and the sum of one per cent. per annum on the entire amount of the bonds so issued by it, as required by the provisions of the aforesaid act, and had been so in default for the period of about three (3) years, when, on or about the 6th day of October, in the year 1866, the trustees of the internal improvement fund of the State of Florida took into their possessions the railroad of the said the Florida Railroad Company, and all the prop-
3 erty of the said company, and advertised the same for sale at public auction, at the town of Gainesville, in the State of Florida, on the first day of November, in the year 1866. And on that day and at that place, it having been announced as the terms of the sale that the purchasers should be bound to continue the payment of one-half of one per cent. semi-annually to the sinking-fund until all the outstanding bonds so issued as aforesaid should be discharged, in accordance with the requirements of section second and section third of said act, and that said sale was made subject to all the conditions of said act, the said railroad and all of the said property were then and there exposed for sale, and were actually sold for the sum of three hundred and twenty-three thousand four hundred dollars to one Edward N. Dickerson and his associates.

And your orators further show that the said the trustees of the internal improvement fund of the State of Florida, having received
4 the said sum of money from the said the purchasers, determined to exercise the power vested in them by the said the third section of the said act of 1855, and to apply the same to the purchase and cancelling of the outstanding bonds issued by the said defaulting company, and not to incorporate the same with the sinking-fund provided by the said act for the full discharge of the said bonds, principal and interest; and that by said application of said purchase-money all of the said outstanding bonds of the said defaulting company were purchased and cancelled, except the number of two hundred and twenty-eight, of which your orator, the said Francis Vose, is the holder and owner of one hun-

dred and ninety-five (195), as aforesaid, and your orator, the said W'm H. Wagner, is the owner and holder of twelve, as aforesaid.

And your orators further show that at the time of the said purchase by the said trustees of the said outstanding bonds there were due and unpaid upon the same a large amount of interest coupons; that
5 the greater proportion of said bonds were purchased from holders in the State of Florida, and that the said the trustees of the internal improvement fund, at the time of taking of said bonds, provided payment of said coupons to the said holders and said sellers of said bonds, said provision being that such payment should be in lands vested in the said trustees by said act of 1855; and that the said lands so given in payment amounted, at the valuation placed upon said lands by said trustees, to the aggregate sum of three hundred and thirty-six thousand dollars, or thereabouts. But your orators aver that no offer of payment of such past-due interest-coupons was made to the holders of the first-mortgage bonds of said company who were residents of the State of New York; but, on the contrary thereof, the purchase or payment of said bonds at the rate of twenty per cent. of the principal thereof was to be made only upon the condition that such bonds, with all the coupons upon the same, whether the same were at the time past due
6 or not, should be surrendered with the said bonds, to be cancelled therewith.

And your orators further show that although the said purchasers of the said railroad and railroad property at the said sale by the said trustees, took the same subject to all the conditions of the said sale under the provisions of the said act of 1855, yet they have wholly failed to comply with the said conditions, and among other things have failed to continue the payment of one-half of one per cent. semi-annually to the sinking fund on the entire amount of the bonds issued by the said the Florida Railroad Company, to be invested by the said the trustees in manner and form provided by the said second section of said act until all the outstanding bonds should be discharged.

Your orators further show that the said Francis Vose, in his said bill of complaint filed against the said trustees of the internal improvement fund and others, as aforesaid, among many other allegations of fraudulent acts of non-feasance and malfeasance against the said trustees,
7 charged that they had failed to receive and demand from the said the present owners of the said the Florida Railroad, and the said the purchasers of the said road had failed to pay semi-annually the sum of one-half of one per cent. on the entire amount of the bonds issued by the said the Florida Railroad Company, as required by the second section of the said act of January 6th, 1855, all of which will more fully appear by reference to said bill of complaint, a copy of which is hereto annexed, marked "Exhibit A." And your orators pray that the same may be taken as part and parcel of this their bill of complaint, as fully & as effectively as if the same had been in words set out and incorporated in this their said bill.

And your orators further show that long subsequently to the said purchase of the said Florida Railroad and property by the said Edward N. Dickerson and his associates, they and their agents and persons claiming with them or under them made application, as your orators are informed and believe, to the general assembly of the State of Florida for the passage of an act to change the corporate name of the said
8 the Florida Railroad Company, and that during the month of January, or early in February, of the year 1872, an act was accordingly passed changing the name of the said company and giving it

the corporate name of "The Atlantic, Gulf and West India Transit Company"; but your orators show unto your honors that the passage of said act and the said change of corporate name could in no wise affect the title or remove the liabilities of the said applicants, but that the said the last-named corporation holds the said railroad property subject to the conditions and liens put upon it by the terms of the said sale by the said trustees, and subject to the said payment of the amount already due and unpaid to the said sinking fund, as aforesaid, and to the amount which shall hereafter semi-annually fall due, until the entire amount of said outstanding bonds, principal and interest, shall have been fully paid and discharged.

And your orators further show that on the first day of June, in the year 1872, the Hon. Philip Fraser, one of the judges of this court,
9 pronounced his judgment and decree upon the petition of your orator, the said Vose, praying for a rule upon Harrison Reed and others, constituting the said the trustees of the internal improvement fund of the State of Florida, in which "it is ordered" "that Aristides Doggett, esq. (your orator), be, and he is hereby, appointed receiver of all monies & securities belonging to the said trust fund (meaning the internal improvement fund of Florida) in the hands of said trustees, or of any other person or persons whomsoever; to demand and receive the same and to sue for and receive the same" * * * * "and to demand, sue for, and recover from any and all persons having in their hands or control any of said trust fund, or any property belonging to said fund, or who have misapplied said funds or converted any part thereof to their own use," all of which will more fully appear by reference to the said decree, and to the said petition and to the entire record of the cause of the said Frances Vose against the said Harrison Reed and others, the trustees of the internal improve-
10 ment fund of the State of Florida and others, all of which record appertains to this honorable court, and your orators pray that it may be taken, held, and considered in its entirety, & in all of its component parts, as an exhibit to this their bill of complaint, with the usual liberty of reference.

And your orators further show that subsequently, to wit, on the seventeenth of December, 1872, the said cause of Francis Vose against the said trustees and others came to a final hearing in this honorable court; and that on the eighteenth day of said month of December, his honor W. B. Woods rendered his decree, in which, among other things, it is "ordered and decreed that the said receiver (your orator) shall have power and authority to demand and receive all moneys which may be already due, or which may hereafter become due to the said the improvement fund of Florida, whether by the purchasers and present owners of the railroads which have been sold under the provisions of the act of 1855, or by any person or body corporate whatsoever, and
11 that it shall competent for him to make any person or body corporate who shall contest the validity of any claim which he may assert by virtue of this decree, a party defendant to this suit for the purpose of enforcing the collection of such claim should the same be adjudged valid;" and in which said decree "it is further ordered and decreed that the appointment of receiver (the appointment of your orator, Aristides Doggett) hitherto made, be continued for the purposes of that appointment."

And your orators show further, that your orator, the said receiver, has demanded from the said the trustees of the internal improvement fund, under the power vested in him by the said decree and appointment of

the said first day of June, 1872, all the money due as aforesaid by the said purchaser of the said Florida Railroad and its property; that is to say, the said Edward N. Dickerson and associates, and the persons claiming with and under them and holding the said property, that is to say, the said Atlantic, Gulf and West India Transit Company, but
12 that the said trustees have wholly failed and refused to pay the said sum of money already so due as aforesaid, which your orators aver now amounts to one hundred thousand dollars, or thereabouts; nor have the said purchasers under any of the names hereinbefore set out as having been assumed by them paid the same, but have therein wholly failed. And they the said trustees and the said purchasers and holders of the said property at times pretended that the said purchasers have paid into the said sinking-fund all the money that can justly be claimed of them under the terms of the said sale; whereas your orators charge that the contrary is the truth; that by fraudulent collusion between the said parties but a small proportion so actually due has been actually paid, and that where it is pretended that money has been in fact paid into said sinking-fund to be applied to the purposes of its creation, such money has in truth never reached the said fund; such money has been constructively paid by draft on the said Edward N. Dickerson, who has set
13 off against the payment of the same charges against the said the trustees of the internal improvement fund, for fees due by them to him on account of professional services, he, the said Dickerson, being at one and the same time president of the said the Atlantic, Gulf & West India Transit Company, or by whatever name the said association may at that time have been known in Florida, and also a practicing attorney in the said city of New York. And at other times the said parties pretend that under the said terms of said sale, and under the said the third section of the said act of 1855, the said purchasers could only be required to pay one-half of one per cent. semi-annually on the bonds of the said Florida Railroad Company actually outstanding, that is to say, two hundred and twenty-eight in number, as hereinbefore set out; whereas your orators charge that under the said second and the said third section of the said act, under the provisions of the said sections, the said railroad was so, as aforesaid, sold, required that
14 the said purchasers should continue the payment of the one-half of one per cent. semi-annually, which it had been the duty of the said the trustees to receive and demand from the said railroad company prior to the seizure and sale of the said road, and that was a payment of "the sum of one-half of one per cent. on the entire amount of the bonds issued by the said railroad company," which your orators aver to have been one thousand six hundred and sixteen, each of said bonds being for the sum of one thousand dollars. And the said parties at other times pretend that under the said the section of the said act, the discretionary power was vested in the said the trustees of either purchasing the bonds of the said railroad company at a price almost nominal, and cancelling the same, with the money proceeding from said sale, or of incorporating the same in the sinking-fund; whereas your orators charge that it was never in the contemplation of the general assembly of the State of Florida that the said bonds, so issued as aforesaid, under the provisions
15 of said act of 1855, to the payment of which the public credit of the State was thus by legislation pledged, should be by the said the trustees of the internal improvement fund not paid in accordance with said act, but purchased below par. Still less was it contemplated and intended that such purchase, so effected to the injury of the credit of the said State, should inure not to the benefit of the said State, nor

yet to the benefit of the cestuis que trustees of the said th
provement fund of Florida, also created by said legislati
benefit of the said purchasers of the said railroad and
had bought the same in *fee* view of the said act of 1855
terms and conditions which were so, as aforesaid, affixe
chase in relieving them, the said purchasers, from the sa
the said the half of one per cent. semi-annually on twelv
ninety of the said bonds, of one thousand dollars each,
purchaser would have been constrained to pay, even upo
tion that the law required such payment only up
16 of the outstanding bonds, and not upon the entire an
originally issued, until said outstanding bonds sl
discharged; and your orators further charge, that said
said trustees of the said purchasers from the said obligat
said one-half of one per cent. semi-annually in accordance with the positive mandate of the said act of 1855, was a fraud, not simply upon the rights of your orators and others, the cestuis que trustees of the said the internal improvement fund, but upon the rights of the State of Florida itself.

All of which actings, doings, and pretences of the said the trustees and the said the purchasers of the said railroad, whether known as Edward N. Dickerson and associates or as the Florida Railroad Company, or as the Atlantic, Gulf and West India Transit Company, tend to the manifest injury of your orators, the said Francis Vose and William H. Wagner, and all others similarly situated with them.

To the end, therefore, that the said last-named party may, through
17 its proper officer or officers, upon his or their several and respective corporeal oaths, full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and more especially that they may answer and set forth—

1st. Whether the said last-named defendant did not pretend to pay into the sinking fund a part of the money due under the said conditions of the said sale by draft upon the said E. N. Dickerson. Whether the said E. N. Dickerson did not set off fees claimed by him to be due by the said the trustees against the payment of such draft. How many such drafts were drawn for the purpose for making such payments. How much money was paid upon said drafts.

And that the said defendants may come to a full and detailed account of all moneys paid by it under either of its corporate names, or by the said
E. N. Dickerson and associates, into the hands of the said trustees
18 under the conditions and terms of the said sale, designating the name of the trustees to whom each of said payments was made, stating in what form it was made, whether in United States currency or in tax-paying or in non-tax-paying State scrip, or in any other, and what other medium.

And your orators further stating and charging upon information and belief that the said defendant, known at present as the Atlantic, Gulf and West India Transit Company, is utterly insolvent, that the said railroad is being rapidly worn out and destroyed and will soon be unable to pay from its earnings its operating expenses, to the end that an injunction may be granted, to be directed to the said company, its officers and agents, restraining them from undertaking the further management and operation of the same; that a receiver may be appointed to take charge of, to manage and to operate the same, with all necessary

the said first day of June, 1872, all the money due as aforesaid by the said purchaser of the said Florida Railroad and its property; that is to say, the said Edward N. Dickerson and associates, and the persons claiming with and under them and holding the said property, that is to say, the said Atlantic, Gulf and West India Transit Company, but
12 that the said trustees have wholly failed and refused to pay the said sum of money already so due as aforesaid, which your orators aver now amounts to one hundred thousand dollars, or thereabouts; nor have the said purchasers under any of the names hereinbefore set out as having been assumed by them paid the same, but have therein wholly failed. And they the said trustees and the said purchasers and holders of the said property at times pretended that the said purchasers have paid into the said sinking-fund all the money that can justly be claimed of them under the terms of the said sale; whereas your orators charge that the contrary is the truth; that by fraudulent collusion between the said parties but a small proportion so actually due has been actually paid, and that where it is pretended that money has been in fact paid into said sinking-fund to be applied to the purposes of its creation, such money has in truth never reached the said fund; such money has been constructively paid by draft on the said Edward N. Dickerson, who has set
13 off against the payment of the same charges against the said the trustees of the internal improvement fund, for fees due by them to him on account of professional services, he, the said Dickerson, being at one and the same time president of the said the Atlantic, Gulf & West India Transit Company, or by whatever name the said association may at that time have been known in Florida, and also a practicing attorney in the said city of New York. And at other times the said parties pretend that under the said terms of said sale, and under the said the third section of the said act of 1855, the said purchasers could only be required to pay one-half of one per cent. semi-annually on the bonds of the said Florida Railroad Company actually outstanding, that is to say, two hundred and twenty-eight in number, as hereinbefore set out; whereas your orators charge that under the said second and the said third section of the said act, under the provisions of the said sections, the said railroad was so, as aforesaid, sold, required that
14 the said purchasers should continue the payment of the one-half of one per cent. semi-annually, which it had been the duty of the said the trustees to receive and demand from the said railroad company prior to the seizure and sale of the said road, and that was a payment of "the sum of one-half of one per cent. on the entire amount of the bonds issued by the said railroad company," which your orators aver to have been one thousand six hundred and sixteen, each of said bonds being for the sum of one thousand dollars. And the said parties at other times pretend that under the said the section of the said act, the discretionary power was vested in the said the trustees of either purchasing the bonds of the said railroad company at a price almost nominal, and cancelling the same, with the money proceeding from said sale, or of incorporating the same in the sinking-fund; whereas your orators charge that it was never in the contemplation of the general assembly of the State of Florida that the said bonds, so issued as aforesaid, under the provisions
15 of said act of 1855, to the payment of which the public credit of the State was thus by legislation pledged, should be by the said the trustees of the internal improvement fund not paid in accordance with said act, but purchased below par. Still less was it contemplated and intended that such purchase, so effected to the injury of the credit of the said State, should inure not to the benefit of the said State, nor

yet to the benefit of the cestuis que trustees of the said the internal improvement fund of Florida, also created by said legislation, but to the benefit of the said purchasers of the said railroad and property, who had bought the same in *fee* view of the said act of 1855 and under the terms and conditions which were so, as aforesaid, affixed to the purchase in relieving them, the said purchasers, from the said payment of the said the half of one per cent. semi-annually on twelve hundred and ninety of the said bonds, of one thousand dollars each, which the said purchaser would have been constrained to pay, even upon the assumption that the law required such payment only upon the amount
16 of the outstanding bonds, and not upon the entire amount of bonds originally issued, until said outstanding bonds should be fully discharged; and your orators further charge, that said release by the said trustees of the said purchasers from the said obligation to pay the said one-half of one per cent. semi-annually in accordance with the positive mandate of the said act of 1855, was a fraud, not simply upon the rights of your orators and others, the cestuis que trustees of the said the internal improvement fund, but upon the rights of the State of Florida itself.

All of which actings, doings, and pretences of the said the trustees and the said the purchasers of the said railroad, whether known as Edward N. Dickerson and associates or as the Florida Railroad Company, or as the Atlantic, Gulf and West India Transit Company, tend to the manifest injury of your orators, the said Francis Vose and William H. Wagner, and all others similarly situated with them.

To the end, therefore, that the said last-named party may, through
17 its proper officer or officers, upon his or their several and respective corporeal oaths, full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and more especially that they may answer and set forth—

1st. Whether the said last-named defendant did not pretend to pay into the sinking fund a part of the money due under the said conditions of the said sale by draft upon the said E. N. Dickerson. Whether the said E. N. Dickerson did not set off fees claimed by him to be due by the said the trustees against the payment of such draft. How many such drafts were drawn for the purpose for making such payments. How much money was paid upon said drafts.

And that the said defendants may come to a full and detailed account of all moneys paid by it under either of its corporate names, or by the said E. N. Dickerson and associates, into the hands of the said trustees
18 under the conditions and terms of the said sale, designating the name of the trustees to whom each of said payments was made, stating in what form it was made, whether in United States currency or in tax-paying or in non-tax-paying State scrip, or in any other, and what other medium.

And your orators further stating and charging upon information and belief that the said defendant, known at present as the Atlantic, Gulf and West India Transit Company, is utterly insolvent, that the said railroad is being rapidly worn out and destroyed and will soon be unable to pay from its earnings its operating expenses, to the end that an injunction may be granted, to be directed to the said company, its officers and agents, restraining them from undertaking the further management and operation of the same; that a receiver may be appointed to take charge of, to manage and to operate the same, with all necessary

and proper directions, and that the said railroad and all its property of every kind may be adjudged and decreed to be liable to the pay-
19 ment of the said sum of money hereinbefore set out, as constituting a first lien upon it, in possession of the said defendant, and that the same may be resold in accordance with the provisions of the act of 1855, for the payment of said money; and that your orators may have such other and further relief in the premises as to the court shall seem equitable and just, with the costs of this action, may it please your honors to grant unto your orators the writ of injunction, to be directed to the said defendant, its officers, its agents and servants, enjoining and restraining each of them in manner and form as hereinbefore prayed for.

May it please your honors to grant to your orators the writ of subpœna, to be directed to the said defendant, thereby commanding it at a certain day, and under a certain pain, therein to be specified, to appear in this honorable court, to answer all and singular the premises, and to stand to, perform such order & decree therein as to your honors shall seem meet.

(Signed) JACKSON, LAWTON & BASSINGER,
Compl't's Solicitor.

J. B. A. DREW,
Of Counsel.

20 UNITED STATES OF AMERICA,
Northern District of Florida, ss:

Francis Vose, the complainant in the for egoing bill of complaint, being duly sworn, says that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) F. VOSE.

Subscribed and sworn to this 20th day of December, 1872, before me.
(Signed) J. E. TOWNSEND, *Clerk.*

21 In the fifth circuit court of the United States for the northern district of Florida.

To the judges of the United States Circuit court for the northern district of Florida.

Francis Vose, a resident and citizen of the State of New York, brings this, his bill of complaint against Harrison Reed, who is the governor of the State of Florida; Robert H. Gamble, who is the comptroller of said State; Almon R. Meek, who is the attorney-general of said State; Frank W. Webster, who is the surveyor general and register of public lands of said State; Simon B. Conover, who is the treasurer of the said State; John S. Adams, who is commissioner-general of immigration of said State, the six last named persons being trustees, as hereinafter mentioned, and citizens of said State; the trustees ot the internal improvement fund of Florida, a corporation created by act of the general assembly of said State, located within, and a citizen of the same; David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith, late trustees, as hereinafter described, and all of them residents and citizens of said State; the Pensacola and Louisville Railroad Company; the Florida Railroad Company; the Florida Canal and

Inland Transportation Company; the Southern Inland Navigation Company; all of said last named companies being corporations created by acts of said general assembly of Florida, and residents and citizens of said State; the New York and Florida Lumber Land and Improvement Company, a corporation created under the laws of the State of New York, but designed to be located and to do business in said State of Florida, and actually located and doing business therein, and therefore a resident and citizen thereof; Mickles, the agent of said last named company, a resident and citizen of said State; and Hubbart L. Hart, a resident and citizen of said State.

And thereupon your orator complains, and says that, on the sixth day of January, in the year 1855, "an act to provide for and encourage a liberal system of internal improvements in this State" was approved by the governor of Florida, by which said act certain lands and proceeds from sales of the same were set apart and declared a distinct and separate fund, to be called the internal improvement fund of the State of Florida, and to be strictly applied, according to the provisions of said act; and for the purpose of assuring such application, the said lands, and the funds arising from the sales thereof, after paying the necessary expenses of selection, management and sale, were irrevocably vested in five trustees, to wit, in the governor of the State of Florida; the comptroller of public accounts of said State; the treasurer, the attorney-general, and the register of public lands of the State of Florida, and their successors in office, to hold the same in trust for the uses and purposes thereinafter provided, with the power to sell and transfer said lands to the purchasers and receive payment for the same; to invest surplus monies arising therefrom and the surplus interest accruing from such investments, and to pay out of said fund, agreeably to the provisions of said act, the interest from time to time as it might become due on the bonds to be issued by the different railroad companies under authority of said act, and with further power to receive and demand, semi-annually (after each separate line of railroad is completed),
22 the sum of one-half of one per cent. on the entire amount of bonds issued by said railroad company as a sinking fund, for the payment of said bonds as they should fall due.

And your orator further shews that, by the fourth section of said act, two lines of railroad were indicated as proper improvements to be aided from said internal improvement fund, one of them being "a line from Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Keys, in East Florida." And that by the fifth section of said act the several railroads already chartered, or which might thereafter be chartered, any portion of whose authorized routes should be within the lines laid down in section four, should have the right of constructing such portion of the line on giving notice to said trustees of the internal improvement fund of their full acceptance of the provisions of said act, etc. And that, by section eight of said act, it was further provided that, on completion of said railways in manner and form set forth, said companies should be authorized to issue coupon bonds, as described therein, at the rate of eight thousand dollars per mile for the purchase and delivery of the iron rail, spikes, plates, and chairs. And that, by section ninth of said act, certain duties are imposed upon such railroad companies, the comptroller of public accounts, and the State treasurer, which should perfect said bonds, secure the payment of the coupons, or interest upon the same, thus making them saleable in the markets of the world, in accordance with the comprehensive design of said legislation; all which will more fully appear by reference to a copy

of said act hereto annexed and marked "Exhibit A," and which your orator prays may be taken as part of this his bill of complaint, with the usual liberty of reference.

And your orator further shews that on the first day of February, 1869, an act was approved "constituting the commissioner of immigration of the State of Florida a member ex-officio of the board of trustees of the internal improvement fund" aforesaid.

And your orator further shews the Florida Railroad Company, at that time already organized and chartered by the legislature of Florida, during the early part of the year 1855, did, in accordance with the provisions of the act first aforesaid, give notice to the trustees of the internal improvement fund of the full acceptance by it of the provisions of said act, for so much of the lines of railroad as lay between Amelia Island, on the Atlantic, and the waters of Tampa Bay, in South Florida, with the extension to Cedar Keys in East Florida; the work on so much of said lines as lay between Amelia Island and the proper point for the branching of the extension to Cedar Keys, together with the said extension, to be commenced immediately, and the line from said points to the waters of Tampa Bay to be commenced as soon as chartered privileges therefor could be obtained. And your orator further shews that on the fourteenth day of December, 1855, an act amendatory of their said charter, so as to extend to said privileges, was approved, giving to said company the power to construct the railroad from Amelia Island on the Atlantic, with an extension to Cedar Keys in East Florida; that said company undertook to construct said lines of railroad accordingly, and gave due notice thereof to the said the trustees of the internal improvement fund.

And your orator further shows that in accordance with the said section eight and section nine of the act first aforesaid the said Florida Railroad Company did issue a large number of coupon bonds, which were recorded by the said comptroller of public accounts, and the record certified on each bond; each of which bonds, as your orator is informed and believes, was dated the first day of March, in the year 1856, and conditioned for the payment of $1,000 on the first day of March, in the year 1891, in the city of New York, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, on the first days of March and September in each year, which semi-annual interest was represented by
23 coupons attached to said bonds, and payable to bearer in the city of New York. That one hundred and ninety-five of said bonds were on or about the first day of November, in the year 1858, issued and delivered by the said the Florida Railroad Company to Vose, Livingston & Company, a copartnership firm in the city of New York, in the State of New York, composed of your orator and Edward Livingston and Charles L. Perkins, on account of an indebtedness to said firm for iron furnished by the said firm to the said the Florida Railroad Company, and used in the building and for the purposes of its railroad; that the said firm was dissolved on or about the first day of May, in the year 1858, and all the interests of the said Edward Livingston and Charles L. Perkins in the said bonds were transferred by them to, and became, and were, and still are, vested in your orator, and he individually became, and still is, the owner and holder of the same; and that there is owing and unpaid thereon the entire principal thereof, and also the entire interest accrued upon the same, except the coupons payable, and which were paid, in the year 1860.

And your orator further shows that the said the Florida Railroad Company failed to provide the interest on the bonds issued by it as

aforesaid, and the sum of one per cent. per annum as a sinking fund, as required by the provisions of the aforesaid act, and had been so in default for a period of about three years, when, on or about the 6th day of October, in the year 1866, the said the trustees of the internal improvement fund, took into their possession the railroad of the said the Florida Railroad Company, and all the property of the said company, and advertised the same for sale at public auction, at the town of Gainesville, in the State of Florida, on the first day of November, in the year 1866; and on that day, at the place last mentioned, it was announced as the terms of sale that the purchaser should be bound to continue the payment of one-half of one per cent. semi-annually, to the sinking fund, until all the outstanding bonds should be discharged; and that said sale was subject to all the conditions of the aforesaid act; and the said railroad and all the said property were then and there exposed for sale, and were sold for the sum of $323,400. and a deed therefor was executed by said trustees to one Edward N. Dickerson and his associates.

And your orator further shows that, with the said sum of $323,400, and without providing for the payment in full of the coupons on said bonds, which were already past due, the said trustees decided to purchase the outstanding bonds of said company, paying therefor the entire purchase-money, equally divided among the whole number of bonds outstanding, which would give to each bondholder two hundred dollars; that they actually purchased and paid for eleven hundred and twenty eight bonds, which left in their hands a balance of $97,800, to be applied to the purchase of the remaining bonds, provided the holders thereof were willing to sell them at the aforesaid rate, or to be invested in the sinking fund. That in November, 1866, they deposited this sum in the hands of Moses Taylor, esq., of the city of New York, to be used by him in conformity with a resolution of said the trustees, etc., adopted on the 7th day of November, in the year 1866, in substance as follows: Resolved, That the $97,800 in hand, arising from the sale of the Florida railroad, be deposited on call in the City Bank of New York; and that M'r Moses Taylor be appointed confidential agent of this board for the purpose of taking up the first mortgage-bonds of the Florida Railroad Company, with instructions to purchase the same, including the past due coupons, at not more than twenty per cent. upon the principal of said bonds.

And your orator further shows that other large sums of money have, from time to time, been received by the said the trustees of the internal improvement fund of the State of Florida, under and by virtue of the provisions of the aforesaid act, but that they have wholly failed to apply the same to the payment of the interest or past due coupons on said bonds; that, instead thereof, they have misappropriated and
24 wasted more than $200,000 of the same, by loaning it upon, or otherwise applying it to, the purchase of, or investment in, worthless securities called Confederate script or bonds, which Confederate bonds or script are of no value whatever, and the whole amount of said fund represented thereby is a total loss; that in, or shortly prior to, the year 1866, they purchased with $41,000 of the same, bonds of the State of Florida at par, the bonds and credit of that State then being greatly below par, which fact was well known to the said trustees, and which bonds still remain unpaid; that on the 11th of March, in the year 1867, the said trustees adopted a resolution to lend to the State of Florida $45,000 of the same, in certificates of the treasury of the said State, which said certificates had been previously received by said board upon loans of the funds or monies of the said internal improvement fund, all

of which said transactions were in violation of law and of the duty of said defendant; that in June, in the year 1867, the said trussees adopted a further resolution, that so much of the money placed in the hands of Moses Taylor, as aforesaid, as should not be applied to the purchase of said bonds prior to the first day of August then following, should be invested in the sinking fund aforesaid, but your orator is informed and believes the said resolution was not carried into effect, and that the money remains in deposit as before; that in December, 1867, the said trustees adopted a resolution authorizing the president of said board to invest out of the fund then in the hands of the said Taylor a sufficent amount to purchase a certain bond of the State of F orida, payable to said Dickerson, for the principal sum of $21,000, and also to invest a sufficient amount to purchase or pay for the interest on the same, at a time when the bonds and credit of said State were greatly below par. And your orator further shows that the said trustees have in their possession, or under their control, other funds and securities, to a considerable amount, belonging to the said internal improvement fund; that there are sums owing by the said the Florida Railroad Company, and other parties, to the defendant, the trustees of the internal improvement fund of Florida, and liabilities thereto of members of said board of trustees who participated in the illegal and wrongful transaction aforesaid, and that the said trustees neglect and refuse to enforce the collection and payment thereof, but as to the amount and character of said last-mentioned funds, securities, sums and liabilities, your orator is without information sufficiently accurate to enable him to say more than that to the best of his belief they are large.

And your orator further shows that the said trustees have illegally and fraudulently misapplied and wasted, and are now fraudulently misapplying and wasting, the lands which were vested in them by the said act of January 6th, 1855; that on the day of they donated to the Pensacola and Louisville Railrod Company all the swamp and overflowed lands for three miles on both sides of the line of said railroad; that on the 18th day of June, 1868, they passed a resolution to the effect that the Florida Canal and Inland Transportation Company should be permitted, upon completion of said canal to Jupiter Inlet, to purchase of said board, at five cents per acre, one hundred and fifty thousand acres of swamp and overflowed land belonging to said internal improvement fund, and on the completion of the said canal from Fernandina to S't Augustine the further quantity of one hundred thousand acres of the lands last specified, at the said nominal price of five cents per acre; that on the 26th day of October, A. D. 1867, they passed a resolution to the effect that they would grant to Hubbart L. Hart the swamp and overflowed and internal improvement lands embraced in the odd numbered sections lying within ten miles of the Ockanaha River and the lakes supplying said river as follows, to wit: For every expenditure made by said Hart in removing the obstructions to the navigation of the said river the said Hart should receive the amount thereof in lands, at the price of the lands aforesaid then prevailing, provided the said expenditure should not exceed the sum of twenty thousand dollars; and although, as your orator is informed, the whole expenditure by the said Hart in removing such obstructions
25 did not exceed fifteen hundred dollars, yet they, the said trustees, have ordered lands to be conveyed to him under said resolution, to the amount of twenty thousand dollars in value at the pre-

vailing prices; and the said Hart has actually received thirty thousand acres of the said lands from the said trustees.

And your orator further shews that on the 28th of July, 1868, the said trustees, by resolution of that date, attempted to secure to the said Southern Inland Navigation and Improvement Company forty thousand acres or thereabouts, of the said trust lands; and that about the 1st of March, 1870, they entered into an agreement with the said The New York and Florida Lumber, Land, and Improvement Company, by which they undertook to convey one million one hundred thousand acres of the same for the nominal price of ten cents an acre; and that this vast domain was, and is, to be selected from the best and most valuable of the said trust lands; all which will more fully appear by reference to a copy of said agreement, hereto annexed, marked "Exhibit B," which your orator prays may be taken as part of this bill, with the usual liberty of reference.

And your orator further shews that the said last-mentioned company was incorporated by the legislature of the State of New York, in the month of July, 1869; that it is composed of speculators, having no real capital of their own; that they are not residents of the State of Florida, nor permanently interested in the improvement or prosperity of that State; that they have an office, or place of business, in the city of Jacksonville, but that your orator, in frequent applications thereat, has wholly failed to find any recognized agent there; although your orator has reason to believe that one Mickles is the agent of the said company.

And your orator further shews that the said company, receiving the said lands at the said nominal price, are now actually offering them for sale in the markets of the world at from three to ten dollars per acre; all which will more appear by reference to a pamphlet, entitled "Florida," published by the said company, a copy of which is hereto annexed, marked "Exhibit C." which your orator prays may be taken as part of this his bill of complaint, with the usual liberty of reference.

And your orator shows unto your honors that all these acts and omissions of the said the trustees, whether in misappropriating said monies, leaving unpaid the said past due coupons, or in neglecting to collect the amounts due to the said fund, or in thus conveying by the million and hundreds of thousands of acres the real estate vested in them, strictly and solely for the uses of their trust, the said trustees have violated the law of said trust, and have grossly defrauded your orator, and all others similarly situated with himself, and who, he respectfully prays, may be allowed to come in as parties complainant to this bill should they desire to do so, upon equitable terms. And as a result of some of these gross and fraudulent violations of duty by the said trustees, your orator further shows that the legislature of the State of Florida, at the first session thereof, under the constitution of the said State of 1868, created divers other corporations (some ten or twelve in number), and your orator is informed and believes that the said corporations last specified were created under the expectation derived from the said previous illegal acts of the said trustees, that the said trustees would convey to them also large quantities of said trust lands, on like fraudulent terms, and this your orator has good reason to fear will be done, unless they, the said trustees, be restrained by the order of this honorable court.

And your orator further alleges that the other parties defendant named in this bill, both private persons and corporations, had due and

full notice that the acts and omissions of the said trustees, as hereinbefore recited, were illegal and fraudulent, and that, by reason of said gross frauds, the said pledges, agreements, donations, sales and conveyances, hereinbefore recited, are null and void as against your
26 orator and other, the parties defrauded thereby; and that where, by virtue of the same, said parties defendant have gone into actual possession of any of said trust lands, they hold them as trustees for the payment of said past due coupons upon the said bonds.

And your orator further shows that the said the trustees have failed to receive and demand from the said the present owners of the said the Florida Railroad, and the said the purchasers of said road have failed to pay semi-annually the sum of one-half of one per cent. on the entire amount of the bonds issued by the said the Florida Railroad Company, as required by the 2d section of the said act of January 6th, 1855; thereby creating a sinking fund as contemplated by said act, for the eventual payment of the principal of said bonds.

And your orator shows that the amount of the entire principal of the said bonds held by him is one hundred and ninety-five thousand dollars; and the amount of the past due coupons, with interest upon the same, is about two hundred thousand dollars; that he has made repeated complaints to the said trustees of their illegal and fraudulent acts and omissions hereinbefore recited; that he has repeatedly called upon them to come to an account of the said trust fund, in which he is mainly and so largely interested; that he has repeatedly requested them to pay to him the amount of the overdue coupons so held by him as aforesaid; that on the 20th day of May, in the year 1868, he addressed and sent a letter to Hon. D. S. Walker, president of the board of trustees of the said internal improvement fund, which was about that time received by the said Walker, of which the following is a copy, to wit:

NEW YORK, *May 20th*, 1868.

Hon. D. S. WALKER,

President Trustees Internal Improvement Fund of Florida:

SIR: I have received your note dated 1st March. You are aware that part of the coupons held by me, which are guaranteed by the internal improvement fund, became due as far back as 1861, and the rest in regular succession every six months from that time; and as I am informed that the trustees have paid to other parties coupons guaranteed by the fund which fell due long subsequent to some of mine, I protest against the action of the trustees in thus postponing the payments to which I am entitled and giving preference to others not entitled to it, and desire hereby to notify you, and through you the other trustees, that I shall hold you and them personally responsible to me for the damage thus done to my rights.

I beg, also, to notify you, and through you the trustees, that I am the holder of 195 bonds of $1,000 each of the Florida Railroad Company, guaranteed by the internal improvement fund of the State of Florida, which are wholly unsatisfied, and that I call upon the trustees to perform the duties incumbent upon them under the law of exacting from that company or whoever may be in possession of its road, under a sale claimed to have been made by the trustees, or otherwise, the due and regular payment to the sinking fund of one-half of one per cent. every six months upon the whole amount of bonds originally issued to the Florida Railroad Company under the guarantee of the fund, whether such bonds be now outstanding or not, including any arrears of such payments due

from the Florida Railroad Company or whomsoever may now be in possession of the road. As I hold so large a proportion of the bonds outstanding, the importance to me of the due and regular exactions of the payments required by the law to be made to the sinking fund is very obvious; I beg to notify you and the trustees that if they fail to perform their duty of exacting these payments, I shall look to them personally for the damage thereby resulting to me.

27 I desire, also, to inform you that I am ready and willing to sell to the trustees, to be taken by them by way of investment of funds in their hands, bonds and coupons held by me, for which the fund is responsible, at rates more favorable than those at which, as I am informed, you have taken other securities for which the fund is not responsible.

I remain, respectfully, your obedient servant,

F. VOSE.

And that on the 1st day of December, in the year 1868, your orator addressed a letter to the defendant, Harrison Reed, who was then governor of Florida and president of the trustees of the said internal improvement fund, which soon after was received by him, of which the following is a copy, to wit:

TALLAHASSEE, *December* 1, 1868.

Hon. HARRISON REED,

President Trustees Internal Improvement Fund:

SIR: I addressed a communication to your board on the 20th of May last. Not receiving any reply, you will please take notice that you will be held personally liable for any loss arising from the application of any trust property or funds in your charge to any purpose whatever, except the payment in their regular order of the overdue obligations for which the trust itself is liable; also for any loss from the sale of lands or other assets of the trust at a nominal price, or for payments taken in Confederate or State scrip, or anything but legal United States currency; also for any loss arising from neglect to enforce the obligations of the several railroads accepting the provisions of the internal improvement act.

I remain, respectfully, your obedient servant,

F. VOSE.

And your orator had well hoped that the said the trustees, and the said defendants, would have complied with such his reasonable demands and requests as in conscience and equity they ought to have done; but now so it is, may it please your honors, that the said the trustees, combining and confederating with the said parties, private and corporate, hereinbefore named and described, and with divers other persons at present unknown to your orator, whose names, when discovered, your orator prays he may be at liberty to insert herein, with apt words to charge them as parties defendant hereto, and contriving how to wrong and injure your orator in the premises, they, the said trustees, absolutely refuse and fail to comply with such requests and demands, and at times they pretend that many of the misapplications of the funds and misappropriations and wastings of the lands belonging to their trust, which are hereinbefore set out, resulted from the acts of their predecessors, for which they are in no wise accountable; whereas your orator charges that under said act of June 6th, 1855, the said trustees constitute a corporation; that by succession they are, in their corporate capacity, accountable for the acts of said corporation, and that the trust

funds in their hands are equitable assets to meet the just claims of your orator, based upon acts of corporate misfeasance or non feasance at any time occurring; but your orator admits that the individual members of said corporation, by violation of their trust, may have rendered themselves also personally liable in damages to him, and he has accordingly made some of the predecessors of the said the trustees parties defendant to this bill, for the purpose of praying a decree to that effect against them. And at other times they pretend that in pledging, donating, and conveying immense amounts of lands to divers persons and corporations for nominal prices, they are in the legitimate discharge of their duties, under the law creating their trust; that by far the largest amount of the lands so vested in them were "swamp and overflowed lands," granted to the State of Florida, with the condition that monies raised from the sale of any portion of the same should be
28 first applied to draining the remainder; that said monies, therefore, could not be legally diverted to the payment, in the first place, of the interest upon railroad bonds; and that the various dispositions which they have made of the lands in question have been in the legitimate interest of their improvement by draining; whereas your orator charges that, in the said dispositions, the said trustees have drawn no distinction whatsoever between the said swamp lands and the five hundred thousand acres of land which were granted to the State of Florida expressly for the general purpose of internal improvement, without condition or qualification; that said last-mentioned lands, though fewer in acres, are by far the most valuable; that the said pledgees or grantees of said lands, parties defendant to this bill, and especially the said corporation, chartered in New York for the improvement of Florida, having an unlimited right of selection, either have possessed, or unless they be restrained will possess themselves of all of the said last-mentioned lands, or of all the highest, driest, and choicest of the said swamp lands; that in thus passing, and attempting to pass, out of themselves the title to vast tracts of the said trust domain, the said trustees are fraudulently abdicating the trust duties imposed upon them by the said act of January 6th, 1855, and more especially by the 16th section of the same, to which your orator prays to refer in full; that the said trustees, in addition to the vast tracts donated, pledged, and granted, as hereinbefore charged, have themselves been and are now actually engaged in selecting for themselves, and allowing their associates to select, from the said trust-lands, at nominal or inadequate prices, receiving in payment for the same scrip or warrants of the State of Florida which are below par, or coupons on said bonds which are junior in date and in claim to those held by your orator; that the pretence that said disposition of said lands looks to the drainage of the same is altogether fraudulent, such disposition having been made for the benefit solely of unscrupulous speculators; and your orator charges further that, in the passage of said act of January 6th, 1855, the government of Florida had in full view the condition annexed to said grant of said swamp lands, and claimed to be, and actually was, in the legitimate fulfillment of its duty in the premises; that in the development of the State by the railway system which was then contemplated, the end—the "reclaiming" of the said swamp lands—would be most rapidly and securely attained; that there were no restrictions placed upon the exercise by the said government of discretionary power as to the mode of effecting that object—the moneys resulting from the sales of portions of said lands to be "exclusively applied" to the purpose in view only "as far as" was in its judgment "necessary;" that the whole subject was exhaustively consid-

ered before the passage of said act of January 6th, 1855 (all of which will more fully appear from a "Report of the Internal Improvement Board of Florida, submitted by the governor to both houses of the general assembly on Friday, December 22, 1854," a copy of which is hereunto annexed, marked "Exhibit D," which your orator prays may be taken as part of this his bill of complaint, with the usual liberty of reference), as a sequence of which report the said act was adopted. And your orator charges that, in fact, the results so ardently desired have been thereby to a very great extent accomplished; that the faith of the State, thus tendered by solemn legislative enactment, was accepted; that the bonds, whose coupons were thus to be paid by a board of trustees, composed of the highest State functionaries, ex officio vested with an irrevocable title to a vast domain, to be held by them primarily liable to the purchasers and holders of said bonds for such payment, were readily received in exchange for the iron, rail, spikes, chairs, etc., which now lie upon two long lines of railway, traversing the State from the Atlantic waters to those of the Gulf. And at other times they pretend that the course they are pursuing in the management of said internal improvement fund will enhance the value of said fund, and thus be of ultimate benefit to your orator; whereas your orator charges that they have been, and are daily,
29 wasting said fund; that they are rapidly destroying the security of your orator for the payment of his coupons and bonds, and that unless he be relieved by the restraining power of this court, they will inflict upon him irreparable loss. And at other times they pretend that they have never refused to return proper accounts and reports of their actings and doings with reference to the said trust funds and lands; whereas your orator charges that for the last two years they have refused to give any account or to make any report whatsoever; that the amount which should have been collected by them from the said the purchasers of the said the Florida Railroad on account of said sinking fund is from sixty to seventy thousand dollars; that the net amount from the sales of lands, judging from the general average of sales made by their predecessors in the trust, should be from one to two hundred thousand dollars; that of this large aggregate sum the said trustees have given no account whatever, although it was the habit of their predecessors to make yearly reports of their actings and doings, and monthly reports of sales, receipts, and disbursements; and your orator charges that their neglect in this respect had become so manifect and scandalous as to have invoked the following comment from the governor of Florida in his annual message under date of January 7th, 1869: "The reports of the surveyor-general and the board of trustees of the internal improvement fund show the affairs of that department in rather a confused and unsatisfactory condition," etc., which will appear by reference to a copy of said message hereto annexed and marked "Exhibit E," which your orator prays may be taken as part and parcel of this his bill of complaint, with the usual liberty of reference; that as one of the results of their failure to keep regular accounts of their receipts and disbursements, and to make proper returns of the same, they have been and are in a position to apply trust funds in their hands to the payment of coupons without regard to their time as fixed by priority of dates in falling due, all of which is in gross violation of sections 2, 3, and 13 of said act of January 6, 1855, which required said trustees to pay first the coupons oldest past due, and the others in the order in which they had fallen due, the language of said act being that they should "pay out of said fund the interest" upon said bonds "from

time to time as it may become due." And your orator further charges that they are also in position fraudulently to purchase, and are actually purchasing, coupons not yet properly payable, and also coupons which your orator is informed and believes have been already paid, but which have been reissued and are fraudulently outstanding, making said purchases at nominal prices, and giving said coupons in exchange for lands belonging to said trust fund, at great profit to themselves.

All of which said actings, doings, and pretences of the said the trustees and the said the other parties defendant to this bill and their confederates, tend to the manifest injury and irreparable wrong of your orator.

To the end, therefore, that the said trustees and their said confederates may, upon their several and respective corporal oaths, full, true, direct and perfect answers make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and they thereunto distinctly interrogated; and that, not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay, and belief; and more especially that they may answer and set forth—

1. Whether the first twelve pages of Exhibit A are not a true copy of the act "to provide for and encourage a liberal system of internal improvements in this State," approved by the governor of Florida on January 6th, 1855? Do not the remaining pages of said exhibit contain true copies of Florida acts of legislation? Is not Exhibit B a true copy of the resolutions passed by the trustees of the internal improvement fund, in response to the New York and Florida Lumber, Land, and Improvement Company? Is not Exhibit C a true copy of a pamphlet published by the said last-named company? Is not Exhibit D a true copy of the report of the internal improvement board of Florida in manner and form as it purports to be? And are not Exhibits E and F true copies of the annual messages of Governor Harrison Reed to the legislature of Florida?

2. Were not the said defendants, David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith, the immediate predecessors of the acting trustees in the execution of the trust created by said act of January 6th, 1855? Is not the New York and Florida Lumber, Land, and Improvement Company a New York corporation? Has it not an office and an agent in Jacksonville, Florida? Is not the defendant Myron S. Mickles its agent in Florida? If not, who is? Has it other agents in Florida? If yea, name them. What was the amount of capital of said company at the date of its incorporation? What is the amount of its active capital now? In what does that capital consist? If in money, where or with whom is that money deposited? How many acres of land has it selected and located in Florida, under the agreement set out in Exhibit B? What amount has it paid to said trustees for such located lands? And when, where, and to whom were the payments made? Were they made in money, or in scrip, or in what? If in scrip or otherwise, was such scrip or paper taken at par, or below par? Were the lands so selected from the internal improvement lands, which consisted originally of 500,000 acres, or from the swamp or overflowed lands? If from either, or from both, specify the number of acres from either, and from each, giving their localities. Is not said company offering said selected lands at from three to ten dollars per acre? Has it drained or undertaken to drain any of such lands? If yea, state how many acres, the location of the same, the

character, cost, and extent of such drainage. Has not said Myron S. Mickles, both before and after the commencement of his agency, selected, located, and received of such trust-lands for himself personally? If yea, how many acres, and of which class of lands?

3. Have not the said trustees conveyed to Hubbart L. Hart lands to the amount and value stated in the bill? If not, how much have they conveyed? And at what estimated prices? What was the character and the amount of work done by the said Hart? Who examined that work and made a report as to its character and value? How much money did said Hart expend upon it? Did he furnish an account and vouchers, showing payments? If yea, let them be attached to defendants' answer. If nay, upon whose representation as to the value of said work, and the amount of said expenditures, was the final settlement made? Were any of the lands so granted to the said Hart selected from the said the internal improvement lands, originally transferred for that specific purpose by Congress? If yea, what was the number of acres so granted to the said Hart, and at what estimated price did he take them?

4. Have not the said trustees pledged or donated a large quantity of said trust-lands to the Southern Inland Navigation and Internal Improvement Company, as stated in the bill? How many acres have they so pledged or donated? What is the value of said land so donated? How many acres were selected from the original internal improvement lands? What is the value of said last-named lands per acre?

5. Have not the said defendants so pledged or donated large quantities of said lands to the said the Pensacola and Louisville Railroad Company, and to the Florida Canal and Inland Transportation Company? How many acres have they so donated? And how many of these were selected from the swamp or overflowed lands, and how many from the original internal improvement lands, and what is the value of each per acre?

31 6. How much of the said swamp or overflowed lands has been drained by the said trustees, or by their immediate predecessors, who are defendants named in this bill? Or by the said Hubbart L. Hart, or the said the Florida Canal and Inland Transportation Company, or the said the Southern Inland Navigation Company, or the said the Pensacola and Louisville Railroad Company? Where are such drained lands located? And what has been the cost of such drainage?

7. How much was received per annum by the said trustees, predecessors named in this bill, from sales of said trust-lands? How much per annum by said trustees themselves? What was the entire amount of trust-lands that came into the hands of said predecessors? How many acres of swamp land? How many of original internal improvement land? How many acres of each of these classes of land did they turn over to their said successors? And how many acres of each class still remain in the hands of the latter, subject to the execution of their trust? Did not the said predecessors keep regular accounts of their actings and doings, receipts and disbursements, and make regular monthly reports of the same? Does not the pamphlet entitled "Documents," accompanying the governor's message, hereto appended, and marked "Exhibit G," contain in its pages a true copy of the report made by said trustees, under the dates therein specified? And is it not a fair specimen of the reports which the said trustees were accustomed to make? Have the incumbent trustees made any such report at any time? Have they made any report at all, whether as regards the disposition of lands, or

as regards their own receipts and disbursements of funds? If yea, let copies of all such reports be appended to their answer.

8. Did not the said trustees, predecessors named in the bill, receive from the sale of the said the Florida Railroad the sum of $323,400? If nay, how much did they receive? For how much was said road sold? And in what form were payments therefor made? And what became of the money so received? Was not a portion, and how much of the same, deposited in the hands of Moses Taylor, of New York City? If yea, what has become of that sum?

9. Did not the said trustees invest $200,000 and over, of monies belonging to said trust fund, in Confederate bonds or scrip as stated in the bill? And has not the same been a total loss? Did they not purchase a bond or bonds of the State of Florida to the amount of more than $41,000, with monies belonging to said trust-fund? And did they not buy these bonds at their par value, and at a time when the bonds and credit of the said State were greatly below par? Where are the said bond or bonds? Have they or any portion of them been paid? If yea, what has become of the money? Did not the said trustees, in December, 1867, or at some other, and, if yea, what other time, authorize the president of the said trustees to invest a portion of the trust-funds at that time under the control of Moses Taylor, or some other person, in the purchase of a certain bond of the State of Florida, payable to Edward N. Dickerson, for the principal sum of $21,000, and to pay the interest thereof in manner and form as stated in the bill? Was not the said bond bought at par value? And were not the bonds and credit of the State greatly below par at that time? What has become of said bond; and, if paid, what has become of the money? Did not said defendants lend other and large amounts of said trust-funds to the State of Florida upon the security set out in the bill? Look upon the printed bill, or note, annexed hereto, and marked "Exhibit H," and say whether the trustees have not received, and do not receive, such notes in payment for trust-lands? What is its value in national currency?

10. Have not the said trustees now in their actual possession large amounts of money, choses in action, and securities belonging to the said trust-fund? Let them specify the amount of said money, or scrip, or choses in action, or securities, giving an accurate description of the same.

32 And that the said defendants may come to a full and detailed account of all monies and property whatsoever, which have at any time come into their own hands or the hands of their predecessors named herein as defendants, in the execution of their trust, more especially that they may make proper accounting of assets, receipts, and disbursements since the month of June, 1868; and that the said trustees may be required, by the order and decree of this court, to pay to your orator the amount which is due upon his said coupons; to protect from from waste the fund (in money, choses in action, land, and other property) liable for the payment of his said coupons and bonds which are not yet due; to collect from the said The Florida Railroad Company, and its present owners, one-half of one per cent. on the entire amount of bonds issued by said last-named company, under the provisions of said act of January 6, 1855, and thus to provide a sinking fund for the eventual payment of the bonds held by your orator, and others, in accordance with its requirements; that for the better securing these ends the said trustees may be enjoined and restrained from selling, or donating, or disposing of said lands, otherwise than in strict accordance with the provisions of the sixteenth section of said act of 1855, fixing

the prices, making arrangem'nts for the drainage, and allowing pre-emptions of the same under all the restrictions of that section; that they may be restrained and enjoined from selling said lands for scrip of any kind, or for aught else than the current money of the United States; that they may be enjoined and restrained from lending or investing, appropriating, disposing of, or using any of the monies or property of the said trust fund, except in payment of the coupons of the bonds issued by railroads in accordance with the provisions of said act of January 6, 1855; that they may be enjoined and restrained from paying said coupons in any other mode than in the order of priority fixed by the language of section 2, section 3, and section 13 of said act; paying first such as first became due, and the others in the order in which they fell due; making regular returns to this court of such payments, with a record of the numbers and dates of said coupons, and the canceled coupons themselves as vouchers; and that the said The New York and Florida Lumber, Land, and Improvement Company, and its agent, the said Myron S. Mickles, and all others, its agents and servants, be enjoined and restrained from further action under the said agreement with, and resolutions by, the said trustees as stated in the bill and fully set out in Exhibit B, whether in selecting and locating lands embraced in said agreement, or in advertising and selling the same; and that the said other defendants named in this bill, whether persons private or corporate, who are in possession of any of the land originally belonging to said trust fund, and pledged, and donated, and wasted in manner set forth in said bill, may be enjoined and restrained from selling, disposing of, or in any wise intermeddling with the same, until the further order and decree of this court; and that the said New York & Florida L., L., and I. Company, and the last-named defendants may also come to an account with your orator for the proceeds which they may have already received from the sale of any portion of said land; and that the said trustees may be adjudged to pay to your orator all damages sustained by him by means of the premises; that a receiver may be appointed of the monies and funds of the said trust fund, with all necessary and proper directions; and that your orator may have such other, further, or different relief in the premises as to the court shall seem equitable and just, with the costs of the action: May it please your honor to grant unto your orator the writ of injunction of the United States of America, issuing out of and under the seal of this court, directed to each of the said defendants, their successors as trustees, their counselors, solicitors, attorneys, and agents, enjoining and restraining each of them in manner and form as hereinbefore prayed for; and that a temporary injunction to the same effect may be directed as aforesaid, to the said trustees, and to the said the New York & Florida Lumber, Land, and Improvement Company, and to the said Myron S. Mickles, and all others, its agents and servants, enjoining and restraining them as aforesaid, until further order of this court.

33 May it please your honor to grant to your orator the writ of subpœna of the United States of America, to be directed to Harrison Reid, Robert H. Gamble, A R. Meek, Frank W. Webster, and S B. Conover, trustees of the internal improvement fund of Florida, and "the trustees of the internal improvement fund of Florida"; and also to David S. Walker, C. H. Austin, Hugh H. Corley, John Beard, John B. Galbraith, The Pensacola & Louisville Railroad Company, The Florida Canal and Inland Transportation Company, the Southern Inland Navigation Company, The New York and Florida Lumber, Land, and Improvement Company, Myron S. Mickles, and Hubbart L. Hart, there-

as regards their own receipts and disbursements of funds? If yea, let copies of all such reports be appended to their answer.

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32 And that the said defendants may come to a full and detailed account of all monies and property whatsoever, which have at any time come into their own hands or the hands of their predecessors named herein as defendants, in the execution of their trust, more especially that they may make proper accounting of assets, receipts, and disbursements since the month of June, 1868; and that the said trustees may be required, by the order and decree of this court, to pay to your orator the amount which is due upon his said coupons; to protect from from waste the fund (in money, choses in action, land, and other property) liable for the payment of his said coupons and bonds which are not yet due; to collect from the said The Florida Railroad Company, and its present owners, one-half of one per cent. on the entire amount of bonds issued by said last-named company, under the provisions of said act of January 6, 1855, and thus to provide a sinking fund for the eventual payment of the bonds held by your orator, and others, in accordance with its requirements; that for the better securing these ends the said trustees may be enjoined and restrained from selling, or donating, or disposing of said lands, otherwise than in strict accordance with the provisions of the sixteenth section of said act of 1855, fixing

the prices, making arrangem'nts for the drainage, and allowing pre-emptions of the same under all the restrictions of that section; that they may be restrained and enjoined from selling said lands for scrip of any kind, or for aught else than the current money of the United States; that they may be enjoined and restrained from lending or investing, appropriating, disposing of, or using any of the monies or property of the said trust fund, except in payment of the coupons of the bonds issued by railroads in accordance with the provisions of said act of January 6, 1855; that they may be enjoined and restrained from paying said coupons in any other mode than in the order of priority fixed by the language of section 2, section 3, and section 13 of said act; paying first such as first became due, and the others in the order in which they fell due; making regular returns to this court of such payments, with a record of the numbers and dates of said coupons, and the canceled coupons themselves as vouchers; and that the said The New York and Florida Lumber, Land, and Improvement Company, and its agent, the said Myron S. Mickles, and all others, its agents and servants, be enjoined and restrained from further action under the said agreement with, and resolutions by, the said trustees as stated in the bill and fully set out in Exhibit B, whether in selecting and locating lands embraced in said agreement, or in advertising and selling the same; and that the said other defendants named in this bill, whether persons private or corporate, who are in possession of any of the land originally belonging to said trust fund, and pledged, and donated, and wasted in manner set forth in said bill, may be enjoined and restrained from selling, disposing of, or in any wise intermeddling with the same, until the further order and decree of this court; and that the said New York & Florida L., L., and I. Company, and the last-named defendants may also come to an account with your orator for the proceeds which they may have already received from the sale of any portion of said land; and that the said trustees may be adjudged to pay to your orator all damages sustained by him by means of the premises; that a receiver may be appointed of the monies and funds of the said trust fund, with all necessary and proper directions; and that your orator may have such other, further, or different relief in the premises as to the court shall seem equitable and just, with the costs of the action: May it please your honor to grant unto your orator the writ of injunction of the United States of America, issuing out of and under the seal of this court, directed to each of the said defendants, their successors as trustees, their counselors, solicitors, attorneys, and agents, enjoining and restraining each of them in manner and form as hereinbefore prayed for; and that a temporary injunction to the same effect may be directed as aforesaid, to the said trustees, and to the said the New York & Florida Lumber, Land, and Improvement Company, and to the said Myron S. Mickles, and all others, its agents and servants, enjoining and restraining them as aforesaid, until further order of this court.

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by commanding them, and every of them, at a certain day, and under a certain pain, therein to be specified, personally to be and appear in this honorable court, and then and there to answer, all and singular, the premises, and to stand to, perform, and abide such order and decree therein as to this court shall seem meet.

And your orator will ever pray, &c.

Solicitor, and of Counsel.

NOTE.—The said defendants who are now trustees, or who have been trustees of the internal improvement fund of Florida, are required to answer all the questions in this bill numbered from "1 to 10," both inclusive. The said The New York and Florida Lumber, Land, and Improvement Company, and the said Myron S. Mickles, will answer the interrogatories numbered 1 and 2. The said Hubbart L. Hart will answer the interrogatories numbered 3 and 6. The Southern Inland Navigation and Improvement Company will answer interrogatories numbered 4 and 6. The Pensacola & Louisville Railroad Company will answer interrogatories numbered 5 and 6.

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

Francis Vose, the complainant in the foregoing bill of complaint, being duly sworn, says that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to this day of , 1870, before me.

34 (Indorsed:) In the United States circuit court for the northern district of Florida. Francis Vose, complainant, and Harrison Reid et al., trustees of the internal improvement fund of Florida et al. Bill for discovery, injunction, and relief. Jackson, Lawton & Basinger, complainant's solicitors.

35 *Answer* to *J. S. Adams to the application of complainant for attachment.*

Filed April 29, 1872.
(Signed) J. E. TOWNSEND,
Clerk.

In the U. S. circuit court, 5th judicial circuit, northern district of Florida.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND et al.

36 This defendant, answering, says, in response to the general tenor of the allegations of wastefulness and recklessness against the defendants in the petition of the complainant:

That the great body of the claims against the internal improvement fund, of which this defendant and his colleagues are officially the legal custodians, consist of the bonds of the different railroads which are

beneficiaries of the act constituting the fund and creating the trustees; for the ultimate redemption of which bonds the trustees are bound to establish and maintain a sinking fund, and the coupons of which bonds are guaranteed payment in lands, or the proceeds of the sales thereof.

That the action of the trustees in the management of the fund within the last few years has been such as very largely to increase the value of the coupons and bonds of said roads, and of the security for their payment derived from the fund.

In the year 1866, for non payment of its tax for the sinking fund,
37 the Florida Railroad was seized and sold by the trustees agreeably to the provisions of the internal improvement act of 1855, & the same course was subsequently taken with the Florida, Atlantic & Gulf Central R. Road in 1868, and with the Pensacola and Georgia and the Tallahassee Railroad in 1869.

The Florida Railroad was sold in 1866 for an amount equal to 20 per cent. of the total amount of its bonds issued and guaranteed by the fund; and the whole of said amount was deposited with Moses Taylor of New York, a pro minent banker there, for the purpose of taking up the outstanding bonds of that road at that rate.

Nearly all of the bondholders of that road gladly availed themselves of the opportunity, and accepting the 20 per cent. surrendered their bonds. The complainant in this case at that time refused to accept the conditions of proffered payment, and brought suit in New York against the trustees, alleging gross wastefulness, carelessness, and fraud on the part of the trustees, and asking the appointment of a receiver,
38 and said suit precisely similar in its character, in its allegations and scope, is still pending and undecided in the courts of New York, having been litigated in the defence of the fund at great expense.

The Florida, Atlantic & Gulf Central Railroad was, for similar cause, sold in 1868, and also brought 20 cents on the dollar of its liabilities, and with this amount so received from the sale of the road, all of its bonds, except $36,000 of bonds, have been paid up and surrendered.

In 1869, the Pensacola and Georgia, & the Tallahassee R. Roads for default in payment of their sinking fund tax, were taken possession of and sold by the trustees for enough to take up all the bonds of the P. & G. R. R., and about 94 per cent of the bonds of the Tallahassee R. Road. Of the amount for which these bonds were sold, bonds to the amount of $960,000 with their coupons attached to a great amount have been paid in, and the bonds and coupons thus received and cancelled exceed $2,000,000 in amount: while more still exists a balance of the purchase money of said roads unpaid of some $462,900 with interest, for
39 which suit has been brought, and for the payment of which the J. P. & M. R. R. has been, by order of the State court, seized and placed in the hands of a receiver. From all which, as this defendant alleges, it will be apparent that with the exception of the claimant in this case, who refused to accept terms readily acquiesced in by other creditors, the claims of all other creditors have been almost entirely satisfied, or satisfactory arrangement for their payment has been made, so that the fund, in its entirety, consisting of several millions of acres of land, gives ample security for the ultimate redemption of the bonds held by Fr's Vose, and for the payment of his coupons; and therefore that the allegations in said complainant's petition made, that the security of complainant's claim is endangered by the careless mismanagement and fraud of trustees, is not well founded.

And this defendant further says, that the trustees have always rec-

ognized the claim of M'r Vose, and that said trustees while having neither the ability nor the inclination to make his a preferred
40 claim, or to extend special terms to him in contradistinction to other creditors, have still urged upon M'r Vose the acceptance of the terms offered to other creditors, and have, from time to time, made repeated efforts to settle his claim with such means as were within their control.

That in 1868 M'r Vose desired that the trustees would make the coupons held by him receivable for lands, and thus make his coupons more marketable, and that in fact about that time, before this defendant was made a member of the board of trustees, said complainant made and executed with this defendant a contract in writing, by which, in case his coupons could be made receiveable for lands, he agreed to intrust his coupons to this defendant and his three partners for sale upon terms then agreed upon and in said contract specified.

That in January, 1870, complainant by his attorney, D. S. Walker, appeared before the trustees and urged the payment of M'r Vose's claim, whereupon the trustees then agreed to receive the coupons of M'r Vose for land under certain conditions. But the conditions were not
41 accepted by the complainant and the negotiation failed. But in June, 1870, in consideration of the large amount of claims against the fund which had been satisfied and the thus assured sufficiency of the fund to satisfy all legitimate claims against it, and incited also by an earnest disposition to settle and pay the claim of the complainant, the trustees, with sufficient guard against imposition, did make the coupons of R. R. bonds, guaranteed by the fund, receivable for lands, but as will appear from the petition of the complainant, this action of the trustees, though taken with the wishes of complainant, is yet made the basis of virulent denunciation of the trustees.

And this defendant further says, that influenced by a sincere desire to settle the demand of the complainant, and to save the useless expense to the fund, caused by an unnecessary litigation of a claim which they did not dispute, the trustees have instituted conference after conference and repeated negotiations with the complainant and his attorneys until such repeated negotiations terminated in the final decree by con-
42 sent signed by Judge Woods in December, 187 ; and since the failure of compliance with said decree in consequence of the default of other parties, on the *the* 8th March, 1872, the trustees, by resolution of that date, proffered to M'r Vose, in settlement of his claim, to invest in complainant's bonds the sinking fund on hand to the amount of $50,000, and the pro-rata share of the sinking fund of the Florida Railroad pertaining to complainant's bonds as said fund may accrue, and to give him 600,000 acres of land, in land floats or certificates for complainants coupons, thus making a most liberal offer which complainant declined.

And this defendant further states in reference to the alleged insecurity of the claim of the complainant, that since the accession of the present trustees, the market price of bonds, coupons and other claims against the fund has steadily increased.

At the time of the sale of the Florida Railroad in 1866, at 20 per cent. of its liabilities, the coupons of that road were easily pur-
43 chaseable in the market at ten cents on the dollar, but that after the sales of the various roads hereinbefore referred to, and the liquidation of claims against the fund thereby caused, the value and market price of bonds & coupons of said roads has steadily advanced and the effect of the policy of the trustees in the management of the

fund has been such that, notwithstanding the allegations in the petition of the complainant impugning the good faith and business sagacity of the trustees, the fact stands out in the knowledge of all men cognizant of R. road affairs in Florida, that the bonds and coupons of the various roads referred to, including those of M'r Vose, the complainant, from the calling in and payment of more than 60 per cent. of all legitimate claims against the fund resulting from the management of the trustees, have so largely increased in value that the coupons of M'r Vose, which in 1865–'6 could not have been sold in market at ten cents on the dollar, are now held at from 40 to 60 cents on the dollar, and this in spite of the immense expense caused by the pending of suits against the
44 trustees in M'r Vese's name both in New York and in Florida for the same cause of action, and at the same time.

And this defendant, in regard to the specific allegations in said complainant's petition for an attachment last filed in this honorable court, further answering, says:

That in obedience to the decretal order of this hon. court made in May, 1871, and renewed in December, 1871, directing a reconveyance to the trustees of the lands theretofore conveyed to the Florida Improvement Company and to E. A. Steadwell, the direction of this hon. court has been fully obeyed, and the deeds of reconveyance from said Florida Imp. Co. and said Steadwell have been fully executed and filed in this court pursuant to its order, and that all of said lands have, by resolution of the trustees, been restored to market, and that so far as this defendant knows no design has existed on the part of any of the trustees to make any other disposition of said lands than in strict accord-
45 ance with the order of court herein and with the consent of the complainant.

And in reference to the second allegation in said last petition of sale of land to W. H. Gleason in violation of the injunction, this defendant states that long previous to the issue of injunction in this case, viz, in April, 1870, in accordance with a contract theretofore made with the Southern Inland Navigation and Improvement Company, a concession was made of lands to said company on their payment of the stipulated price, and on their filing of a bond in said concession prescribed, and its approval by the trustees, deeds were ordered to issue.

That payment for said lands had already at that time been deposited with the treasurer of the board, and that the form of the required bond was filed with and approved by the board in the month of September, 1870, and thus the whole contract consummated some three months prior to the issuing of the injunction, and that no deeds other than in furtherance of such completed contract have to the knowledge of this defendant issued.

46 And in regard to the sale of lands for coupons, no such sale has occurred, except when the proceeds of sale, in strict accordance with the injunction, have been invested in coupons of equal or prior date to those of the complainant.

And in response to the 3d allegation of a "pretended contract" with Mess. Swann and Williams, this defendant states that a contract for the selection of swamp and overflowed lands, agreeably to the laws of the United States, was presented to the trustees for consideration by Mess. Swann and Williams, of Fernandina, men of known character for competence and integrity, on the 4th February, 1871; that said contract was by the trustees approved, and referred to the governor to complete, as by law and custom the appointment of agents for selection depended upon the governor. This contract was fully considered and unani-

monsly approved by the trustees, was also approved by the governor, and returned to the trustees to be recorded on 4th March, 1871, and was then recorded and published in the annual report of the trustees.

47 By said contract for every acre selected Mess'e'rs Swann and Williams, on return of the plat and lists, were to receive two cents, payable in land at one dollar per acre, and, as in the case of competent and upright agents, approval of selections follows selections as a matter of course. The selection of such men was deemed equivalent to an addition of the fund of so much land as might be selected, which, at the established price, would be held at $1.25 per acre, and the so-called "pretended contract" was deemed a reasonable and desirable one. And this defendant further states that so far as his knowledge extends neither this defendant nor any of the other trustees has or ever had any or the slightest interest whatever in said contract.

In reference to the 4th allegation of the complainant, this defendant states that it is true that the treasurer of the fund was during the year 1871, as had often been done before, authorized to exchange State scrip for R. coupons of similar character to those of the complainant,

48 and did do so to the amount of $15,000, thus and to that extent diminishing the indebtedness of the fund, and to the same extent relieving the trustees from the burden of the allegation of having accepted State scrip instead of R. R. coupons in payment for land.

And in reference to this allegation this defendant further states that in 1871 non-tax-paying State scrip was selling at from 30 to 33 cents on the dollar, while the policy of the trustees had advanced the market price of coupons from about 10 cents 1866 & '7 to from 30 to 40 cents, and that thus the exchange of scrip for coupons was in fact an exchange of equivalents.

In reference to the fifth allegation of complainant, that the sinking fund might have been invested more profitably, these defendants state that the trustees have made repeated efforts to recall the balance in Taylor's hands in New York, which this complainant refused to accept in payment of his bonds, upon terms readily accepted by other bondholders, and which thus received at compound interest would have

49 insured the payment of his bonds at their maturity, but have been foiled in every effort to recal' said balance, and in order to invest the same according to law, and this mainly by the interposition of the lawsuit brought by complainant in New York.

That the heavy payments to counsel have been incurred in defending the sinking fund, which by law is appropriated to the payment specifically of the principal of the bonds of said road, against the demand of complainant that the same should be expended in the payment of coupons for interest, as the trustees have supposed, in violation of law and against right.

And of any substitution of individual trustees of money received from Florida R. R. for scrip this defendant has no knowledge, and believes that any investment of the assets of the fund in U. S. bonds, or State bonds and liabilities, or in R. R. bonds guaranteed by the fund, if any such has been made, is precisely permitted by the internal-improvement act.

In regard to the non-obedience to the decree of December, 1871,

50 of his honor Judge Woods, this defendant states that he was personally informed, on application to the clerk of the hon. court, that the decree by order of court had been prohibited from entry on the docket, as being informal and of no effect.

As to the seventh allegation of the said complainant, this defendant

states that the system of keeping the land books in the State land office is such that a complete history of every transaction in the sale of land is completed, describing the tract sold in full, giving the kind, the quantity, the description, the appraised value, and the nature of the payment, and thus, at a glance, the complete transactions of the office are displayed.

That while it is true that the regular treasurer's books of the treasurer of the board preceding the present has never come into the hands of the present trustees, and thus there is no regular treasurer's book belonging to the board as such, yet such treasurer is required to make, and does make, a complete record of all expenditures of the funds of the trustees coming into his hands, which is periodically examined and approved or
51 disapproved, and corrected. That this defendant, while treasurer, has kept and returned his accounts, and retained the same when settled and approved, as voucher, and that, as far as he knows, his predecessor took the same course. Of late the treasurer of the trustees has been required to give satisfactory bond in $20,000.

In regard to the 8th allegation of the complainant, that the trustees are about to give a favorable hearing to a proposition from the Florida Improvement Company to receive 250,000 acres of land for $125,000, this defendant will not undertake to answer as to the probable future action of the trustees any farther than to say that if the allegation be well founded it would only show a disposition on the part of the trustees to offer to another claimant precisely the same terms which have been repeatedly tendered to the complainant.

And this defendant further says that he personally, and his co-defendants, the trustees, he believes, have not intended, wished, or desired,
52 nor have he or they violated the decretal order of this honorable court, or any mandate or injunction thereof, but, upon the contrary, that this defendant & he believes the other trustees have used their best efforts and judgment to obey this honorable court, and now and at all times are anxious and desirous so to do; and further, that as before shown this defendant and his co-trustees he believes have no personal interest or benefit in any of the matters set up by complainant; that they have official duties to perform, and nothing else actuates this defendant, and he believes his co-defendants, but an anxious desire to discharge faithfully the official duties connected with the trust and the laws of the State; and that the fund was not created for the sole benefit of the complainant, but that the action of complainant has been vexatious & litigous and of great injury to the fund, as shown above; and this defendant shows the court that the complainant ought not to be permitted to carry on & litigate two suits, one in this court & one in New York, about the same subject-matter, and the damage and injury to
53 the fund, by increased expense and costs, and this defendant asks the court that time may be given the trustees to produce the records of the suit now pending in New York against the trustees instigated by the said Francis Vose to prove the allegation of the multiplicity of suits.

And further, this defendant shows to the court that the trustees have, as above shown, vastly increased the value of the fund and the securities in the hands of the said Vose, and that the United States have in market under the homestead law a vast area of arable lands, being millions of acres more than the fund in the trust, and that while the U. S. arable lands can, under the homestead act, be valued at less than ten cents per acre, the trustees ought not to be expected, nor are they chargeable with inefficiency because they cannot sell at high prices the swamp and

overflowed, when arable lands can be obtained as aforesaid for 10 cents per acre of the United States.

Further, defendant says that the railway cos. now engaged in
54 the construction of the lines of railroad designated in the internal-improvement act are the parties for whose chief benefit the fund was created, and that if the arrangements contained in the decree having reference to the J. P. & M. R. R. Co., or something similar thereto, was effected, or shall be by order of this court carried out, the objects mentioned in the act, to wit, the line of railroad east and west therein designated, and the debts against the fund, can be settled and secured, but in no other way can the defendant see how it is possible for the trustees to accomplish these desired ends within a period of years that could be mentioned.

That the Jacksonville, Pensacola and Mobile Railroad Company, and the Atlantic, Gulf and West India Transit Company, the first engaged building the railroad to the western termini, and the other to the southern termini, designated in the internal improvement act, are beneficiaries of the fund; and if these parties can be induced to assume and settle the debts against the fund, and will guarantee the completion of
55 the lines of rail designated in the fund, that the fund would be well used, provided these t'o objects can be obtained, because as shown the demand for the lands by private parties is so small as to make it beyond the power of the trustees to say when they can pay the debts against the fund by sale to private parties. But that the corporations above referred to may be enabled by reason of their ability to give second mortgages on their respective roads, and first mortgages on these lands, be enabled to borrow money thereon sufficient to pay the debts of the fund and to complete their lines of road. That this defendant reported these views which actuated the trustees, and the whole subject relative to the decree aforesaid, to the last legislature of Florida for their consideration as required by law, the records of the State prove.

But it is evident that no value to the complainant, to the R. R. Co., or to any one else can be in the title to these lands from the trustees, so long as any litigation whatever may be had as to the titles.
56 And therefore this defendant asks this court that all such titles, if they are to be made, shall be confirmed by the court.

And defendant hereto annexes a copy of his report upon lands made to the legislature of Florida at its last session. Wherefore he prays that he may be hence dismissed with his costs.

(Signed) J. S. ADAMS.

Sworn to before me this 29th day of April, A. D. 1872.

(Signed) J. E. TOWNSEND, *Clerk.*

D. P. HOLLAND,
Of Counsel for J. S. Adams.

57 In the circuit court of the United States for the fifth circuit northern district of Florida.

FRANCIS VOSE, COMPLAINANT,
vs.
HARRISON REED ET AL., TRUSTEES OF THE Internal Improvement Fund of the State of Florida et al., defendants. } In equity.

Harrison Reed, Robert H. Gamble, and Simon B. Conover, defend-

ants in the above cause, now and at all times hereafter saving & reserving to themselves all benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, or informations in the said petition of the complainants, for answer thereto or to so much as these defendants are advised is material for them to make answer unto, answering say: That they have been members of the board of trustees since the year 1868, and as such have from time to time, and on most occasions, attended the meetings, and partici-
58 pated in the action of the said board; that as the transactions of the board are matters of record, these defendants rely more particularly upon the said record for a history of the transactions and to refresh their recollections; and that the relation given in the answer of John S. Adams, filed in this cause to said petition contains substantially the facts according to the best recollection and belief of these defendants; and the said Reed, having heard the same read, prays leave to refer to the same as part of his answer herein, and the same Adams, as this defendant Reed is informed and believes, has fully stated the contents of said Adams' answer to said defendants, Gamble & Conover, and they made request that the same should be made a part of their and each of their answers herein, and authorized said Adams so to state. And this defendant Reed further says, that as to the exchange of scrip for coupons set out in the petition, that at the time it was done there were present these defendants Reed & Conover, James B. C. Drew, then acting as attorney-general, and defendant John S. Adams. That at that time nor since
59 had these defendants any intention, desire, or willingness to violate said injunction; that the matter was dismissed, and the conclusion arrived at was, that the board had the rights under the injunction to make such exchange, thinking, too, that the exchange was a benefit to and not a lessening of the security to the complainant, as it was in liquidation of so much of the liability of the fund growing out of the guaranty of the railroad bonds.

And these defendants further answering say, that although the trustees have always considered the contract effected with Mess'e'rs Swann & Williams a prudent one, & profitable to the fund, yet previous to the service of the last petition and order on the trustees the contracts had been terminated by resolution of the board for the reason that said Vose & his attorneys had complained in relation to it.

And these defendants say it is not true that the lands selected by Swann & Williams are confessedly worthless, but are believed by
60 these defendants to be of an average intrinsic value equal to that of the swamp and overflowed lands in other portions of the State, and are held at the same price, to wit, $1.25 per acre. And while said Swann & Williams may have desired this information in reference to the lands so by them selected in their service as United States surveyors, yet that information could not have been had by the board without compensation therefor, & the board regarded the compensation as no more than reasonable, and that the mode of payment adopted was better for the fund than two cents per acre in currency at twenty per cent. discount.

And these defendants further say that the law organizing the bureau of immigration & providing for a commissioner, provides that the commissioner may act as joint attorney for both vendor and vendee when they may so elect of lands within the State (laws of 1869, page 6, sec. 6), and that said Adams did accept an agency in connection with Samuel A. Swann for the sale of certain lands belonging to the Florida Railroad Company & its bondholders. But this or any other agency

61 had no connection with the contract with Swann & Williams for the selection of lands, & the selection of these two gentlemen for such selection of lands was made in reference to their well-earned and well-known & deserved reputation for probity and integrity.

And these defendants deny that any arrangement has been made or contemplated with the Florida Improvement Company to give its land warrants for 250,000 acres of land as set forth in said petition.

And these defendants deny that there has been any extravagant or wasteful fees paid to attorneys to defend their unlawful acts, or for any purpose whatever; but that in the employment of counsel, the board have had reference solely to the protection of the fund and the security of its application alike to all the contemplated objects of its creation.

And these defendants deny that it appears from the evidence taken that the business of the board has been conducted in the loosest
62 manner, or that it will appear that since the present incumbents have had charge that the detail of its affairs are not as susceptible of explanation from its records as would be found in the history of other trusts of like character.

And these defendants positively deny that there has been any prostitution of the funds, or that there has any contracts or agreements made but such as they supposed was in keeping with the spirit and object of the acts creating them, and in carrying out the object of the grant from the United States, and the intention of the people of the State as expressed in the act of 1855, and the amendatory acts thereto. That about the time of the accession of the present board of trustees, nearly all the available cash assets of the fund consisted of a deposit of nearly thirty thousand dollars in hands of Moses Taylor, in the city of New York, and that one of the first acts of the board was to send defendant, Conover, to New York to demand this portion of the fund to be used in taking up the bonds of which the complainant's claim forms a part.
63 This was refused by said Taylor, and about the same time complainant commenced the suit referred to in said Adams' answer, and the diminution of the fund complained of in petition is mainly caused by the reduction of that fund by the order of that court, and by the necessary expenses for counsel and other expenses, in that and other suits instituted by complainant, and that no part of that fund has ever come to the hands of the trustees.

That any investments that have been made by the board in State securities has been fully warranted by the spirit and intention of the act of 1855, as these defendants confidently supposed.

That since the service of the order to show cause it has been utterly impossible, owing to the confusion & uncertainty as to who was the board, to confer and arrange an answer as full and completely as might otherwise have been prepared. But that the matters complained of and not herein fully answered will be found in the published report
64 appended to the answer of said Adams.

(Signed) HARRISON REED.
(Signed) J. S. ADAMS.

65 In the northern district of Fla.

STATE OF FLORIDA,
County of Duval, ss:

Harrison Reed, one of the defendants named in the above answer, being duly sworn, says he has heard the above and foregoing answer read & knows the contents thereof; that the same is true, except as to those

matters therein stated to be on information and belief, and as to those matters he believes it to be true; that said Gamble & Conover are not here to swear to the same, but that this defendant, up to the 10th day of February last, has been generally cognizant of the history of the transactions of the board, & can as well state what has been stated as they could do.

(Signed) HARRISON REED.

Sworn before me this 10th day of May, 1872.

(Signed) J. E. TOWNSEND, *Clerk.*

66 Northern district of Florida.

STATE OF FLORIDA,
County of Duval, ss:

John S. Adams, one of the defendants in above entitled cause, being duly sworn, says that he has heard read the above and foregoing answer to the petition filed in said cause, and that he knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes it to be true. That defendants Conover & Gamble are at Tallahassee & could not be here in time to sign and swear to said answer, but that this defendant is better acquainted with the facts & circumstances than said defendants, he being the secretary of the board & familiar with the records and transactions.

(Signed) J. S. ADAMS.

Sworn to before me this 10th day of May, A. D. 1872.

(Signed) J. E. TOWNSEND, *Clerk.*

(Indorsed:) United States circuit court, northern district of Fla. Francis Vose, complainant, vs. Harrison Reed et al. Trustees, &c. Answer of Harrison Reed & Jno. S. Adams. Filed May 10, 1872.

(Signed) J. E. TOWNSEND, *Clerk.*

67 The joint and several answers of Harrison Reed, who is the governor of the State of Florida; Simon B. Conover, who is the treasurer of said State, & John S. Adams, who is the commissioner of immigration of said State, trustees of the internal improvement fund of the State of Florida, defendants, to the bill of complaint against them in the United States circuit court for the fifth circuit and northern district of Florida by Frances Vose, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they, these defendants, severally answering, say: * * * These defendants, further an-
68 swering, admit that they hold the offices, respectively, above-named; that these defendants with their former co-trustee, Almon R. Meek, the attorney-general of said State, and their now co-trustees & co-defendants, Robert H. Gamble, comptroller of said State, and Frank W. Webster, surveyor-general and register of public lands of said State,

were elected and appointed to the offices held by them, respectively, as aforesaid on or about the dates following, viz, Harrison Reed, governor, &c., May 6th, 1868; Robert H. Gamble, comptroller, &c., July 10, 1868; Simon B. Conover, treasurer, &c., July 21, 1868; Frank W. Webster, surveyor-general, &c., July 29, 1868; John S. Adams, commissioner of immigration, &c., January 14th, 1869, and Almon R. Meek, attorney-general, &c.

That by virtue of their said offices they became respectively from the dates of their respective elections and appointments, as aforesaid, trustees of said fund, except this defendant, John S. Adams, who was
69 constituted ex officio a trustee as in said bill alleged by an act of the legislature of said State, approved February 1st, 1869, but they deny that the trustees of said internal improvement fund, as in said bill alleged, are a corporation created by act of the general assembly of said State, or that said trustees, or these defendants as such trustees, are in law, equity, or otherwise, responsible, liable, or chargeable as a corporation or body corporate.

That their former co-trustee, Almon R. Meek, attorney-general of said State, resigned his said office and thereby ceased to be a trustee of said fund on or about the 10th day of December, 1870. That Sherman Conant was appointed to fill the vacancy occasioned by the resignation of the said Almon R. Meek on or about the 10th day of December, 1870.

That the said Sherman Conant accepted said office and continued therein, and to discharge the duties thereof, until the adjournment of the late session of the legislature of said State, to wit: on or about the 26th day of January, 1871.

That J. B. C. Drew is now filling the said office of attorney-gen-
70 eral of said State by an "ad interim" appointment made by the governor thereof, and by virtue of such appointment is now acting as their co-trustee.

That these defendants were elected and appointed to office as aforesaid under the new or reconstructed State government of said State then recently established under the reconstruction acts of the Congress of the United States. That owing to the unsettled political condition of said State for some time preceeding, and for some time after the inauguration of said new State government, the said defendants and their then co-trustees in the discharge of the duties cast upon them as trustees as aforesaid, and with which they had had no previous acquaintance, experienced great difficulty in obtaining full and accurate information with respect to the status of said fund or its administration by their predecessors.

That their difficulties and embarrassments in this behalf were enhanced by the fact that their immediate predecessors never turned over or made to these defendants any formal or regular surrender of the said fund, or furnished to these defendants any reports, accounts, lists, schedules, or statements, showing its status or condition at the
71 time when it first fell into the hands of these defendants.

That on account thereof in respects to many matters they were compelled to get information as best they could; that they and their then co-trustees addressed themselves at once to the new & embarrassing duties which by virtue of their offices were thus devolved upon them, and they insist that under all the circumstances, and with a due appreciation of the magnitude of their trust, and the various and important public and private interests connected therewith, that they have discharged their duties, not only in good faith, but in accordance with the spirit, object, and purposes of said trust, and they deny that they, or

either or any of them, have been guilty of fraudulent and illegal acts, and of neglect and refusal to discharge their duty as the said complainant has in and by his said bill alleged against them.

And these defendants, further severally answering, say that they insist that the said complainant is not entitled from these defendants, or any or either of them, to any discovery, or as against these de-
72 fendants, or any or either of them, to any relief touching or concerning any breaches, or alleged or supposed breaches, of trust occurring prior to the election or appointment of these defendants to office as aforesaid; and that if entitled to any such discovery or relief, the said complainant is entitled to the same only from or against those whose acts are brought into question, and who were then in control of said fund, and are, or ought to be, familiar with all and every of such matters, and who, as these defendants believe, are well known to said complainant, and are some of them parties defendants to his said bill, and not from or against these defendants, who could not have had, and did not have, any connection therewith, and cannot, according to any principle of equity & good conscience, be controlled or prejudiced in their management of said fund on account thereof, or to be held answerable or chargeable therefor.

These defendants further severally answering, admit that the "act to provide for and encourage a liberal system of internal improve-
73 ment in this State," was approved by the governor thereof, as in said bill alleged, and that Exhibit A to said bill annexed is a true copy of said act; that thereby certain lands therein mentioned, and the proceeds which had accrued or were to accrue to said State from the sale thereof, were set apart and declared a distinct & separate fund, to be called "The Internal Improvement Fund of the State of Florida," and to be strictly applied according to the provisions of said act; that by the second section thereof it was, among other things, provided that for the purpose of securing a proper application of said fund for the purposes in said act declared, said lands, and all the funds arising from the sale thereof, after paying the necessary expenses of selection, management, & sale, were irrevocably vested in five (5) trustees, to wit, in the governor of said State, the comptroller of public accounts, the State treasurer, the attorney-general, and the register of public lands, and their successors in office, to hold the same in trust for the uses and purposes thereinafter provided, with the power to sell and transfer said lands to the purchasers, and receive payment for the
74 same, and invest the surplus moneys arising therefrom from time to time in stocks of the United States, stocks of the several States, or the internal improvement bonds issued under the provisions of said act, and drawing not less than six per cent. annual interest, also the surplus interest accruing from such investments, and to pay out of said fund agreeably to the provisions of said act, the interest from time to time as it should become due on the bonds to be issued by the different railroad companies, under authority of said act; also to receive and demand semi-annually the sum of one-half of one per cent. (after each separate line of railroad was completed) on the entire amount of the bonds issued by said railroad company, and invest the same in stocks of the United States, or State securities, or in the bonds in said act provided to be issued by said company. Also to invest the surplus interest of said sinking-fund investment as it should accrue, and also to demand and receive from each railroad company
75 named in said act the an't due to the internal improvement fund from said railroad company, according to the provisions therein

contained, on account of interest on the bonds issued by said company, &c., though for greater certainty as to the particular contents of said act, these defendants crave leave to refer thereto, when produced to this honorable court.

These defendants further severally answering, admit that the Florida Railroad Company, as in said bill alleged, accepted the provisions of the said "Act to provide for and encourage a liberal system of internal improvements in this State" for so much of the line of road indicated in said act as a proper improvement to be aided from the internal improvement fund as lay between Amelia Island, on the Atlantic, to Tampa Bay, in South Florida, with an extension to Cedar Keys, in East Florida, and that said company did, under its original charter and the act amendatory thereto, and in conformity with the provisions of the said "Act to provide for and encourage a liberal system of internal improve-
76 ment in this State," *did* construct and build so much of said line of road and extension as lay between the said points, Amelia Island and Cedar Keys; and that under the terms of said act the said Florida Railroad Company did issue a large number of coupon bonds of the character and for the amounts stated in said bill, and that these defendants are informed and believe that the said complainant is the owner and holder of one hundred and ninety-five of said bonds, and that the entire principal thereof and interest thereon, save such of the coupons as were paid in the year 1860, are still outstanding.

That they also believe it to be true that the said Florida Railroad, on account of the failure of said company to provide for the interest on the bonds issued by it as aforesaid, and the sinking-fund of one per cent. per annum required by the said act, the provisions of which it had accepted as aforesaid, was in conformity to the provisions of the said act at or about the time stated in said bill by the predecessors of these
77 defendants, the persons then holding the offices of trustees of said internal improvement fund, taken possession and sold, and that Edward N. Dickerson and associates became the purchasers thereof for about the sum *of* stated.

That the said sale was made by the predecessors of these defendants, as these defendants are advised and believe, upon the conditions expressed in the said "Act to provide for and encourage a liberal system of internal improvements in this State," that the purchaser should continue the payment of one-half of one per cent. semi-annually to the sinking fund until all the outstanding bonds were discharged, under the penalty of an annulment of the contract of purchase and the forfeiture of the purchase-money paid in, and these defendants are advised that the provisions of said act in this behalf made, with respect to the conditions of sale and the penalty and forfeiture resulting from the non-compliance therewith on the part of the purchaser, constitute and are the only right, lien, or claim which the holders of outstanding bonds have upon said road.

78 That these defendants had nothing to do with the sale of said road, nor did they decide to make, or in fact make, any purchase of outstanding bonds of said road after its sale, or deposit any of the moneys arising from said sale in the hands of Moses Taylor, of the city of New York, or any one else.

That these defendants were not, nor were either of them, at the time of said alleged transactions, trustees of the said fund; they are, however, informed and believe that the persons then exercising the duties of trustees of said fund did purchase or receive, as equivalent to cash, from the purchasers of said road, at their pro-rata of the purchase.

money, bonds of the Florida Railroad Company to the amount mentioned in said bill; they are also informed and believe that the persons then discharging the duties of trustees did place the amount mentioned in said bill in the hands of the said Moses Taylor for the purpose of purchasing and taking up the outstanding bonds at the rate mentioned, and that the said Moses Taylor did afterwards purchase some of said bonds; the precise amount they cannot here state, but are informed
79 and believe that, up to April, 1868, he had purchased or taken up two hundred and fifty-seven (257) of said bonds, and that so much of the money originally deposited with him as has not been used in purchasing said bonds, or in purchasing a bond of the State of Florida, payable to Edward N. Dickerson and associates, as will be hereinafter more fully stated, still remains in his hands.

These defendants deny in most positive terms that they or either of them ever received or misappropriated the sum of $200,000 or any other sum, or loaned or invested said sum or any other sum in Confederate scrip or bonds, or that they purchased with $41,000 belonging to said fund, bonds of the State of Florida, or that they adopted a resolution to lend to the State of Florida $45,000 of the said fund, or that in the year 1867 they adopted any resolution with respect to the fund in the hands of the said Moses Taylor, or adopted any resolutions authorizing the president of said to invest out of the funds then in the
80 hands of the said Taylor a sufficient amount to purchase a bond of the State of Florida, payable to said Dickerson, for the principal sum of $21,000, and the interest on the same, or that they or either of them were in any manner connected with any or either of the said transactions charged and alleged in said bill, as occurring prior to and during the year 1867, and prior to their several and respective appointments.

That it may be true that the persons then exercising or claiming to exercise the duties of trustees of said internal improvement fund, did, during the late war, invest or appropriate some part of said fund then under their control in Confederate scrip or bonds which have proved worthless, but these defendants insist that they are in nowise responsible therefor, or chargeable therewith, and that these defendants the present trustees of said fund, who are wholly innocent of any connection therewith, ought not to have visited upon them any of the consequences resulting from the alleged mismanagement, misappropria-
81 tions or faults of others whose actions they could not control, and for whose conduct, as hereinbefore stated, they were in no wise responsible.

And these defendants, further severally answering, say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know and have never been informed, save by the said complainants' said bill, whether the investment in Confederate scrip or bonds, or the purchase with $41,000 out of said fund of bonds of the State of Florida, was or were made as in said bill stated; they believe there was a resolution of like character and effect as that referred to in said bill adopted by their predecessors to lend to or exchange with the State of Florida $45,000 in treasury certificates, but whether such exchange or loan was made or not, these defendants, nor can any or either of them, upon the knowledge, information, or belief of the others or either of them, state, but they believethat if such loan or exchange was made it was for interest-bearing bonds of said State, and was made with a view of benefitting said fund, said treasury certificates
82 bearing no interest, and in conformity to the letter and spirit of

said internal improvement law with reference to its investments, &c., and they also believe that their predecessors also adopted a resolution of like character and effect as that stated in said bill to invest in the sinking fund so much of the money in the hands of Moses Taylor as had not prior to August, 1867, been applied to purchasing bonds outstanding of the said Florida Railroad Company, and that said resolution was not carried into effect, and they also believe that their predecessors did out of the funds in the hands of the said Moses Taylor purchase a bond of the State of Florida from Edward N. Dickerson of the amount and at or about the time stated in said bill.

That there is a bond of this character among the assets now in the possession of this defendant, John S. Adams, who is at present acting as the treasurer of said belonging to the sinking fund of the said Florida Railroad, but as to the value of said bond, at the time of its alleged purchase, these defendants do not know, nor can any
83 or either of them state, and they again reiterate that they were not then in office, and did not have as trustees of said fund, or otherwise, at that time any connection with said alleged purchases.

And the defendants, further severally answering, say that they, these defendants, are not nor are any or either of them, to the knowledge, information, or belief of the others, or other of them, nor are their now co-trustees or former co-trustee, to the knowledge, information, or belief of these defendants, indebted to the said trust-fund, nor have these defendants, or any or either of them, to the knowledge, information, or belief of the others, or others of them, nor have their now co-trustees or former co-trustee participated or joined with others not trustees of said fund, indebted to said fund, in fraudulent and illegal acts with respect to the said fund, as stated in said bill; and these defendants further deny that these defendants, or any or either of them, to the knowledge, information, or belief of the others or other of them, or their now co-trustees or former co-trustee, or several or any or either of them, have fraudulently misapplied or wasted the lands belonging to the
84 said fund, as in said bill stated; on the contrary, they aver that the acts and doings of the trustees of said fund since these defendants have been connected therewith in the disposal and disposition of the lands belonging to the said fund, were and have been in good faith, and in the exercise of the discretion vested in them by the law creating their said trust, and not without the scope of their power or contrary to the spirit, objects, and purposes of their trusts.

The defendants farther, severally answering, say that they are advised and believe that the trustees of the said fund adopted a resolution to sell to the Pensacola & Louisville Railroad Company swamp and overflowed lands within six miles of each side of the line of said road, upon the completion of said road, but that nothing further has been done in the matter; that the road has not been completed, and no lands have been conveyed to it; and they deny that in the act of adopting this resolution the said trustees violated the law of their trust, or in any manner prejudiced the rights of the complainant: and they deny that the
85 said trustees have made any donation of lands to the said Pensacola and Louisville Railroad Company, as in said bill stated.

These defendants, further severally answering, say that a resolution was adopted by the immediate predecessors of these defendants on or about the twenty-sixth day of October, A. D. 1867, a copy of which they annex hereto, marked "Exhibit A," and pray that the same may be taken and considered as a part of this their answer; that this is the resolution to which they are advised the said complainant refers in his said bill as

a resolution to grant certain swamp overflowed and internal-improvement lands to one Hubbard L. Hart; that the said resolution having been previously adopted before these defendants, or the , with which they are connected, came into office, and the said Hubbard L. Hart having in part performed, as these defendants are advised and believe, his contract thereunder, and having already received a conveyance of a large portion of the land to which he was entitled, and believe-
86 ing it to the interest of the said fund to complete and carry out in good faith the provisions of the said resolution, a conveyance was made to the said Hart for the balance of the lands to which he was entitled; that before completing the said contract with the said Hart, their co trustee, Frank W. Webster, surveyor-general, &c., was sent by the trustees to inspect and examine the work done by the said Hart in cleaning out said river; that he made such examination, and upon a favorable report from him, and upon satisfactory proof from the said Hart of his expenditure in said work, the said trustees felt bound to carry out the resolution adopted by their predecessors as aforesaid; that the labor and expenditure of the said Hart were, as these defendants are informed & believe, estimated at cash prices, and the lands conveyed to him were conveyed and sold to him at the same prices that they were sold to others, no discrimination being made in favor of the said Hart in this respect; that as results following their action in this behalf,
87 one hundred miles at least of the said Ocklawha River has for the first time been made navigable by steam, that boats are now running up and down said river; that large bodies of swamp and overflowed lands have been drained & relieved from inundation; that a new & valuable trade has been opened up into a comparatively new and unsettled country by the communication thus established, inducing immigration, and thereby bringing into the market & enhancing the value of the lands belonging to said funds. That the security or claim of the said complainant, instead of being prejudiced or injured, has been advantaged and made more valuable; and these defendants insist that in carrying out the resolution adopted by their predecessors aforesaid, the trustees acted not only in accordance with their duty and within the scope of the powers given to and vested in them by the law of their trust, but in accordance with the legal and equitable obligations resting upon them, to complete and carry out upon their part, in good faith, a contract already in great part performed by the other party
88 thereto. That this contract with the said Hart is the only contract or agreement, respecting the lands of the said fund, which has been fully completed and ended since the present trustees have been in office.

These defendants, further severally answering, say that they, or either or any of them, are not informed, save by the complainant's said bill, of the adoption or existence of any such resolution or contract as that therein referred to, with the Florida Canal and Inland Transportation Company; that if any such resolution was adopted, it was adopted before these defendants came into office; that no such resolution, or any resolution concerning said company, has been adopted by the trustees of said fund since these defendants, or either of them, have been connected therewith; they are satisfied that no such resolution was ever carried into effect by their predecessors, and they know that these defendants have taken no action whatever to carry out any such resolutions or contract with said company. They believe that if any such resolutions was adopted, or any such sale contemplated, it has
89 long since been entirely abandoned, as neither the said company,

or any one in its behalf, has ever in any way brought the matter to the attention of these defendants.

These defendants, further severally answering, say that the trustees of said fund have conditionally deeded or conveyed to the corporation mentioned in said bill as the "Southern Inland Navigation and Improvement Company," several hundred thousand acres of swamp and overflowed lands, the precise quantity they cannot now state, on the eastern coast of the State; the lands to be sold, and the proceeds thereof to be paid over to the said company on the progressive completion of the work, and only as it is completed, and that upon the stoppage of the work, or its abandonment, the lands are to revert to the fund—that the work is a canal from the Lower S't John's River to Biscayne Bay, to be completed according to contract in the shortest possible time, and within fixed limits, and when completed to be navigable for steamboats; that the opening and building of said canal will redeem from partial inundation and largely enhance the value of *of* adjacent and neighboring
90 lands belonging to said fund; that no lands except swamp and overflowed lands have been conveyed as aforesaid. They insist that the action of the trustees in this behalf has not in any respect been illegal, fraudulent, or prejudicial to the rights of said complainant, or any one else having any claim upon said fund; that such action has been within the legitimate exercise of the powers and discretion vested in them, and in furtherance of the primary objects and purposes of the trusts; that the aiding and encouragment of work of improvement of this character through sections and portions of country where, without such works, inhabitation and settlement could not be induced is the only way be which the land could be brought into market and made available for any purpose; that without such measures to affect its drainage and reclamation where it is possible to drain and reclaim hundreds of thousands of acres of the lands belonging to said fund would forever remain entirely worthless; that the said complainant, on account of his alleged large interest in the lands belonging to said fund,
91 as the source to which he must necessarily look for the security and ultimate payment of his coupons, cannot be otherwise than greatly benefitted by works of this character, and these defendants believe and aver that it has been so benefitted.

These defendants, further severally answering, say that the Florida Lumber, Land and Improvement Company referred to in said bill was incorporated by the legislature of the State of New York, and, as these defendants aver, owes its corporate existence entirely to the said State of New York; that they are informed and believe that the corporate name of said company is the original act of incorporation, to wit, "The Florida Lumber, Land and Improvement Company," has been changed by an act of the legislature of the said State of New York to that of the "Florida Improvement Company"; they are informed and believe that the said company under its contract with the trustees of said fund has selected some 300,000 acres of land; that said company has paid for 100,000 acres of land in past-due coupons, for the payment of which said lands were pledged, upwards of $10,000, and that 100,000 acres of land have
92 been conveyed to said company under its contract with the trustees of said fund, and no more; that the payments were made to the treasurer of said on the 11th day of October, 1870, the coupons being received at par; that the lands selected by said company and conveyed to it as aforesaid were almost exclusively swamp and overflowed lands; that it is impossible now to state the exact amount and locality of each; that to do this would require a great deal of time, and

be a most burdensome expense; besides, these defendants cannot give accurate information, in the absence of their co-defendant and co-trustee Frank W. Webster, surveyor-general, &c.; that the said Frank W. Webster, surveyor-general, &c., is the proper custodian of all the books, records, maps, &c., concerning or belonging to the lands of said fund & occupies, as these defendants are informed and believed, the same position and relation to the present trustees that the register of public lands under the former State government occupied to the prior trustees; that the said Frank W. Webster has been absent from the State since
93 on or about the first of February last, and is now at the time of the preparation of this answer still absent: that the absence of the said Webster has been occasioned, as these defendants are informed and believe, by the extreme illness of his wife; that his absence has been one of the causes which has prevented these defendants from putting in their answer to the said bill of complaint at an earlier day inasmuch as these defendants could not answer as fully and completely with respect to the land matters of said fund in his absence as if he was present with his assistance and information; that notwithstanding the fact that these defendants have access to the books and papers connected with the land matters of said fund, yet in the absence of the said Webster, not being as familiar with the books and papers in his office and specially belonging to his department as he is, they could not even, if at all without a great deal of labor and the expenditure of a great deal of time, answer accurately and precisely as to certain of the
94 matters enquired of in said bill.

These defendants, further severally answering, saypthat with respect to the Florida Lumber, Land and Improvement Company, otherwise called the Florida Improvement Company, that they ar informed and believe that the said company has an office in the city of Jacksonville, in this State, and tnat one Mickles was its agent at that place, but that one E. C. Steadwell is now its agent; that they are further informed that the capital of said company was originally $2,500,000, but they are informed and believe that the capital of said company has been reduced to $25,000, and that this latter sum or capital has all been paid in. They are not informed where or in what this capital consists, but are informed and believe that the said company has expended upwards of $50,000 in carrying out its contract.

These defendants, further severally answering, deny that the action of the trustees of said fund in entering into and carrying out in part the contract with said last-named company as aforesaid has been
95 illegal or fraudulent, or in any manner in violation of their trust or prejudicial to the rights or interests of the said complainants.

These defendants, further severally answering, say that under the sixteenth section of the said "act to provide for and encourage a liberal system of internal improvement in this State" the trustees of said fund are invested by law with the discretion and powers to fix the price of the public lands included in their trust, having due regard to their location, value for agricultural purposes, or on account of timber or naval stores, and to make such arrangements for drainage of the swamp and overflowed lands as in their judgment may be most advantageous to the internal-improvement fund and the settlement and cultivation of the land, and further authorizing and empowering the said trustees to encourage actual settlement and cultivation of said land by allowing preemptions under such rules and regulations as they should deem advisable: providing, however, that in no case should a pre-emp-
96 tion for more than a section of land be granted to any one settler.

That under the power and authority thus given by law to the trustees of said fund all prior trustees since the creation of said fund and the present trustees have always claimed to exercise and have exercised without objection or complaint from any of the parties in interest, so far as these defendants are advised, the right to fix the price of the lands included in the trust, and to alter, change, & vary the same from time to time as in their judgment they deemed best for said fund, having due regard to location, value, &c. That in some instances it has been found that the prices fixed in the first instance were too low or too high, owing to the settlement of improvements of certain sections or the decrease in prosperity of other sections. That in all cases the trustees, as these defendants are informed and believe, have endeavored, in the exercise of the judgment and discretion confided to them by the law, to regulate the prices of the land so as best to promote the interest
97 of said fund, enhance its value, and increase the security of parties having a claim thereupon. That they have felt themselves fully authorized and never doubted their right to make arrangements for the drainage of the swamp and overflowed lands belonging to said fund, by paying for such drainage and improvement in lands of the fund, and in like manner they have felt themselves fully authorized and empowered to make such arrangements and give such inducements as would encourage actual settlement of the lands belonging to said fund, the drainage and settlement of said lands as they allege being the primary object of the grant to the State, and one of the chief duties with which they are charged by the law creating the trust, a duty requiring extensive, prompt, and continued action; that one of the leading objects always kept in view in the administration of said fund was by every legitimate means and proper arrangements to bring the lands into
98 notice, reclaim and redeem from overflow and inundation in all cases where practicable, and where an advantageous contract to effect this could be made, induce settlement and thus make the lands more valuable, to the end that the time might be hastened when the fund would be relieved and released from all present claims upon it, and could be used for new works of internal improvement calculated to promote the welfare and prosperity of the State.

These defendants, further severally answering, say that they are not advised or informed of the purpose of the legislature of the State of Florida in creating at the first session thereof sundry corporations, save what are indicated in and by the acts of incorporation themselves; that they have no reason to believe or just ground to suppose that the legislature desired or intended by the passage of said acts to enable any one to perpetrate a fraud upon said fund, and as to the trustees having previously made fraudulent grants of the land of said fund which operated as an inducement to such legislation, they wholly deny every and
99 all the allegations in this behalf in the said bill contained.

These defendants, further severally answering, say that they do not believe that any of the parties defendant to said bill of complaint with whom the trustees have entered into contracts respecting the land of said fund as aforesaid had any notice whatever or any reason to suspect that the action of the trustees in that behalf was illegal and fraudulent, as in said bill alleged; on the contrary, so far as these defendants are informed, they believe that the parties so contracting with said trustees acted in good faith and upon the belief and advice that their contracts were fully authorized, and it was the impression & belief of these defendants and each of them at the time that the same was binding upon both parties; otherwise they would not have taken such action.

These defendants, further severally answering, say that they admit that these defendants, the present trustees, have not demanded,
100 & that the purchasers of the said Florida Railroad have not paid, the sinking-fund of one-half of one per cent. semi-annually on the entire amount of the bonds issued by the said Florida Railroad Company; that they have not demanded or required of the purchasers of said road the payment of the sinking-fund aforesaid, or any greater amount of bonds than those outstanding at the time such payment was to be made, and in this respect they allege that they have conformed to the precedent of their predecessors and, as they are advised, to their duty and the law in that behalf, and these defendants deny that it is their duty, or that they are required by the "Act to provide for and encourage a liberal system of internal improvement in this State," to exact from or compel the purchasers of the said Florida Railroad to pay the sinking-fund aforesaid on the entire issue of bonds ever made by said company under said internal improvement act, when nearly the whole thereof have been taken up, purchased, surrendered, & cancelled, or that it is their duty to require or exact the payment of said sinking-fund or any of said bonds, except such thereof as may be outstanding at the time when the payment to the sinking-fund as aforesaid is
101 to be made; that the sinking fund of the said Florida Railroad, which has accrued and become due and payable by the purchasers of said road since the present trustees have been in control of said fund, has been fully paid except about $; that the said purchasers are ready to pay and settle this amount as soon as certain setts-off claimed by them against said sinking-fund can be adjusted; that the said complainant instituted a suit in the supreme court of the State of New York to recover and get possession of the sinking-fund of said road deposited by their predecessors with Moses Taylor, as hereinbefore stated; that the present trustees, on account of this action on the part of the said complainant, were compelled to employ counsel to defend said suit; that the said Edward N. Dickerson, the purchaser from whom said sinking-fund was due, was employed by the trustees and authorized to represent them in the defense of said suit in New York; that in so doing, very considerable expense for counsel-fees and costs of
102 court was incurred, and that said Edward N. Dickerson, by whom such counsel-fees and costs were paid, amounting to about $1,500, claims that the same is a just and legitimate sett-off to the demand against him on the sinking-fund account, having been necessarily incurred and made in the protection and defense of the said sinking-fund itself; that the said trustees were fully sustained in their defense of said suit, the decision and judgement of said court being in their favor; that but for this vexatious and expensive proceeding on the part of said complainant, the whole of the sinking-fund from said Florida Railroad would have been paid as it fell due, and that as soon as this matter is adjusted it will be promptly paid, there being no danger of its loss.

These defendants, further severally answering, say that they admit that the said complainant did address letters to D. S. Walker, one of the predecessors of these defendants, and to this defendant, Harrison Reed, as in said bill set forth.

103 These defendants, further severally answering, say that they deny that the trustees have in any manner defrauded or injured the said complainant, or that they have in any manner discriminated against him in their management of said fund; on the contrary, they aver that they have shown every disposition and made every effort in their power to meet and adjust all his claims upon said fund; that it

was at the instance of the said complainant, as these defendants are informed and believe, that the trustees consented to take past-due coupons in payment for the lands of said fund; the said complainant having a large amount of coupons and desiring to *to* make them available for this purpose, so as to realize on them at once without awaiting the sales of the land, which would require a great many years; that the *the* said complainant is fully advised that the trustees have no other means of paying his said coupons, except by paying him in land; that they are willing, upon fair and reasonable terms, to pay him in this way,
104 and *and* have offered to do so, if unwilling to take lands, which constitute the only fund to which he can look for the payment of his coupons. Under the law it is not their fault, and if the said complainant continues to place obstacles in the way of their arrangement for the drainage and improvement of the lands so as to induce settlement, bring them into market, and enhance their value, they cannot and do not hope to be able to realize any very great amount from the sale of lands, at least for many years to come; that while the State of Florida has recuperated as rapidly from the effects of the late war as perhaps any of the Southern States, and now gives a fair promise for further prosperity, yet there has not been upon the part of the people living in the State, owing to the scarcity of money for investments and to the fact that most of them already possessed as much land as they desired, any very great demand for lands to be paid for in cash; that to facilitate the sale of the lands belonging to said fund, and to
105 induce persons to buy and settle upon them, when they could not otherwise have done so, the trustees, with a view of benefitting the fund, took in payment for some of the land sold what is commonly called State scrip, being warrants drawn by the comptroller on the treasurer of the State, or certificates of indebtedness issued by the treasurer of the State, which were convertible into interest-bearing bonds of the State, and with which they could, as they have done, buy up coupons which were a charge upon the fund. That the trustees have been willing, as far as they were able, to take up the past-due coupons held by the said complainant, and have offered to do so, but the said complainant has refused to take State scrip, while others have received such scrip for past-due coupons held by them, and the trustees have thus been enabled to discharge and relieve the fund of a portion of the charges upon it in this way; they insist that in this matter they have not committed a breach of trust, or in any way injured or impaired the rights of the said complainant; they further aver that the trus-
106 tees have, as far as able, with the means in hand and with honesty and impartiality to all, paid and satisfied all the just claims and demands against said fund.

These defendants, further severally answering, say that they deny that either under the said act of June 6th, 1855, or under any other act or law, that they are, as in said bill charged, a corporation, or accountable as such; that they are advised, and believe, that none of their predecessors, from the passage of said act down to the time of the installation of these defendants into office, ever acted or claimed to act in the capacity of a corporation; that the trustees of said internal improvement fund have never had or used a corporate seal; that all the conveyances and instruments under seal executed by them have been executed by each trustee signing his own name and affixing his own private seal or scrawl thereto; that they are advised and believe that the certificates or endorsements on the very bonds which the complainant claims to hold was made by each individual trustee signing

his own name thereto; that shortly after the passage of said improvement law, as these defendants are informed and believe, the persons then first acting as trustees thereunder were advised by very eminent counsel that they were simply trustees charged with the administration of a public trust, and that they have always acted under that opinion and belief; that in suits in the circuit & supreme court, the latter the court of ultimate resort in this State, the said trustees were made, treated, and considered as parties thereto simply as trustees, and not as a corporation.

These defendants further severally answering say that there are others, creditors of said fund besides the said complainant, who hold coupons and are entitled with the said complainant to be paid pari-passu out of said fund. That the coupons so held by these other creditors, according to the best information these defendants can at present obtain, amount to several hundred thousand dollars, and that in all respects they rest upon an equal equity and are an equal charge upon the lands of said fund. That the trustees have very recently proposed to the said complainant to pay the entire amount of his past-due coupons in lands belonging to said fund, or to issue to him what are called land floats, to be located on the land of said fund; said floats to be assignable, thus givin' to them a market value, and placing the said complainant in a position to realize on them at once if he did not desire himself to take lands; that they have also endeavored to effect a settlement with said complainant of all his demands against the trustees on account of the principal and interest of his bonds, upon what they believe was a fair and just basis, but that the said complainant has refused to accede to any of their propositions for settlement, and especially to take lands for his coupons, when he well knows that this is all the trustees have to give him in settlement, setting up as an excuse for his conduct in this behalf that if he should take lands he would be compelled to pay taxes on them, &c., &c. That the trustees are now willing to take the past-due coupons of the said complainant in payment for the lands belonging to said fund from time to time as the said complainant may desire to invest them in lands, or they are willing to sell him at one time in a body and at reasonable prices, having due regard to the interests of others who have a claim upon said lands, enough of said lands to pay and take up all the past-due coupons held by him, but they are not willing to surrender to him the whole fund, without regard to the rights of others who have an equal claim upon it, and without regard to the rights of the State of Florida, who is entitled to the remainder after the present claims upon it are satisfied, and then take upon themselves the trouble, expense, and annoyance of administering the fund for his especial benefit.

These defendants further severally answering say that it is not true, as alleged in the amendment to said complainant's said bill of complaint, that the Florida Lumber, Land, & Improvement Company created under the laws of the State of New York also exists and has been created under the laws of the State of Florida, a body corporate. That they are informed that there is a corporation of very nearly the same name for the sale of lands belonging to the Florida railroad, with its chief place of business at Fernandina, to which, perhaps, the said complainant may refer, but that as hereinbefore stated the said New York corporation owes its corporate existence entirely to the State of New York, and is a citizen only of that State, and is not a citizen of the State of Florida.

These defendants further severally answering say that a proposition was submitted in behalf of the Great Southern Railway Company to the trustees of said fund by A. C. Osborn, president of said company, on or about the 24th day of November, 1870. That this proposition embraces the drainage and reclamation of certain of the swamp and overflowed lands belonging to said fund lying along the line of said road, and that in consideration for such drainage and the effect of such drainage in inducing settlement and enhancing the value of the contiguous lands belonging to said fund, the said company asked for a
111 conveyance upon certain conditions of a portion of the swamp and overflowed lands. That this proposition was favorably considered by some of the trustees of said fund, while it was objected to by others; that two of the said trustees, to wit, this defendant Harrison Reed and this defendant John S. Adams signed a deed or paper purporting to be a deed to the said company, on or about the first day of December, 1870, for 102,000 acres of said lands, conditioned, however, that if the said company did not within eighteen months from the 24th day of November, 1870, relieve the said lands from liability to overflow then the said lands to revert to the said fund. That the said deed or paper purporting to be a deed has never been signed by any of the other trustees of said fund, and without receiving the sanction and signatures of the other trustees, or a majority of the whole number of trustees, the said deed is, as these defendants are advised, wholly invalid for the purpose
112 of passing the title to said lands out of the trustees, and that the title to the same is still vested in them, and that the trustees do not now hold or regard the conveyance as binding upon them, or have taken or propose to take any further action in the premises. These defendants insist, however, that if the propositions made by the Great Southern Railway Company had been carried out it would have resulted in great benefit to the fund by relieving a large portion of the swamp and overflowed lands belonging thereto from inundation, and their action in connection with the same, as hereinbefore stated, is not, they maintain, in any way a breach of trust, and cannot in any way affect injuriously the rights of the said complainant, or any one else having an interest in said fund.

To the first interrogatory these defendants, severally answering say that they believe that the exhibits mentioned therein are correct copies, &c.

To the second interrogatory these defendants, severally answer-
113 ing, say that the said David S. Walker, C. H. Austin, Hugh A. Corley, John Beard, and John B. Galbraith were the immediate predecessors of the present trustees; that the "New York and Florida Lumber, Land, and Improvement Company," the name of which as hereinbefore stated has been changed to the "Florida Improvement Company," is a New York corporation, and owes its corporate existence entirely to the State of New York, as these defendants are informed and believe; that there is a Florida company of very nearly the same name with an office and location in Fernandina, in said State, for the disposal of lands belonging to the Florida Railway Company, but that the New York company above mentioned has *has* never been incorporated in Florida, that the said New York company has an office and an agent in the city of Jacksonville; that Myron S. Mickles was its agent, that E. C. Steadwell is now its agent, do not know whether it has other agents in Florida; the amount of its capital at the date of its incorporation was, as these defendants are informed, $2,500,000; are now informed and believe
114 that its capital stock has been reduced to $25,000, and that the

whole of this has been paid in—cannot state where its capital is, or in what it consists; it has, as hereinbefore stated, located, and selected under its agreement with the trustees, according to the best information which these defendants can now obtain, about 200,000 acres of land; that it has paid $10,000 in past due coupons for 100,000 acres of land; that said payment in coupons was made to the secretary of the trustees of said fund on the 11th day of October, 1870; that said coupons were taken at par; that the lands were selected almost exclusively from the swamp and overflowed lands; that, as hereinbefore stated, they cannot now state which were selected form the internal improvement lands, which consisted originally of 500,000 acres, or which were selected from what is called the swamp and overflowed lands, nor can they now give the locality of each or either class of said lands; that they do not know at what price it is offering its lands, nor are they able to state
115 whether it has or not drained any of such lands. They are informed and believe that said Mickles has bought lands from said fund at the price fixed or prevailing at the time of purchase, or for the same price that other persons could have bought the same lands for; they cannot now state of what class or how many acres were purchased by him from said fund.

To the third interrogatory these defendants severally answering say that there has been conveyed to the said Hubbard L. Hart about $21,000 *dollars* worth of land belonging to said fund, under the agreement hereinbefore referred to as made with him by their predecessors, a copy of which is filed with this answer, marked "Exhibit A"; the precise quantity of acres they cannot now, in the absence of their co-trustee and co-defendant, Frank W. Webster, suveyor general, &c., state; the lands conveyed to him were sold and conveyed at the same prices that they were sold and conveyed to others: the swamp and overflowed lands at fifty cents and the internal-improvement lands at their estimated value, varying from one dollar and twenty-five cents to five dollars per acre; the
116 work done by said Hart was estimated at cash prices; that they are informed that the said Hart expended upwards of twenty-one thousand dollars on said work; that the said Hart did furnish accounts & vouchers for expenditures in said work; upon examination they find among the papers belonging to said trust fund accounts and vouchers for such expenditures, true copies of which they annex to their answer, marked Exhibits B, C, D, E, & F; these accounts, as will be seen by reference thereto, are duly sworn to by credible persons; that, as hereinbefore stated, the final settlement with said Hart was not made until the work done by him was personally inspected, examined, and favorably reported upon by the said Frank W. Webster, suveyor-general, &c.; that of the lands conveyed to said Hart they are informed and believe that about 3,519 $\frac{50}{100}$ acres were internal-improvement lands; and as to all and singular the other matters enquired of in said interrogatory with respect to the lands conveyed to the said Hart, these defendants have hereinbefore answered the same as fully and com-
117 pletely as they, or either or any of them are able to do.

To the fourth interrogatory these defendants severally answering say that they have already, by what has been hereinbefore stated, answered said interrogatory as fully and completely as they, or either or any of them are able to answer the same.

To the fifth interrogatory these defendants severally answering say that they have already, by what has been hereinbefore stated, answered said interrogatory as fully and completely as they, or either or any of them are able to answer the same.

To the sixth interrogatory these defendants severally answering say that they have now no means of forming an estimate of the number of acres of land drained, or the cost of such drainage; to enable them to do this they would be compelled, either personally or through an agent, to inspect and examine the lands, which would require much time; the only contract completed is the contract made with Hubbard L. Hart
118 by the immediate predecessors of these defendants, and which the present trustees carried out as hereinbefore stated; these defendants are informed and believe that the lands along each side of the Ocklawaha River, for one hundred miles, have been greatly relieved from inundation on account of the work done by said Hart, but to what extent these defendants cannot, without an examination and report, undertake to say.

To the seventh interrogatory these defendants severally answering say that they do not know nor are they informed as to how much was received per annum by their predecessors from sale of trust lands; for information on this point, as well as to the amount received per annum by the present trustees, they respectfully refer to the published reports of the trustees, accompanying the governor's message, to be found in the documents accompanying the journals of the senate and house of representatives of the legislature of said State, and as public documents are accessible to the said complainant and all others interested. The
119 pred'cessors of the present trustees and the present trustees have published annually, in connection with the governor's message, two (2) reports, one of their secretary, which is an abstract of their doings, and the other the report of their salesman, which gives information with reference to the lands sold, &c. They find by reference to the report of F. W. Webster, surveyor-general, &c., appended to the senate and assembly journals of the second session of the legislature of said State, begun and held on the 5th day of January, 1869, an estimate of the internal-improvement lands and swamp and overflowed lands belonging to said fund, and remaining unsold on the 31 day of December, 1868, as follows: Swamp and overflowed lands, 9,855,720.55 acres; internal-improvement lands. 230,487.37 acres. Whether these estimates are to be relied on as accurate or not they cannot say; that it is impossible for them to give accurate information in the absence of their co-trustee, the said Webster, who, as hereinbefore stated, had charge of the
120 maps, books records, and papers connected with the land matters of said fund, nor can satisfactory or reliable information be obtained without examining the books and records and the making of abstracts therefrom, which would require a great deal of time. With reference to all and singular the other matters enquired of in said interrogatory, these defendants, by what they have hereinbefore stated, have answered the same as fully and completely as they are now able to do.

To the eighth interrogatory these defendants severally answering say that they have already, by what has been hereinbefore stated, answered said interrogatory as fully and completely as they or either or any of them are able to answer the same.

To the ninth interrogatory these defendants severally answering say that they have already, by what has been hereinbefore stated, answered said interrogatory as fully and completely as they or either or any of them are able to answer the same.

121 To the tenth interrogatory these defendants severally answering say that this defendant, John S. Adams, who is at present acting as treasurer for the trustees, has in his hands about $85,000 of coupons of railroad bonds, guaranteed by the fund, and about $16,000 in what is

called State scrip, convertible into interest-bearing bonds of the State of Florida. There is a small amount of money, not sufficient to meet the expenses of sale, pending litigation and costs.

And these defendants deny all and all manner of unlawful combination & confederacy, wherewith they are by the said bill charged, without this that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for these defendant's to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, & avoided or denied, is true to the knowledge or belief of these defendants, all of which matters
122 and things these defendants are willing and ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) PAPY & PEELER, &
J. B. C. DREW,
Solicitors & of Counsel for Defendants.

UNITED STATES OF AMERICA,
Northern Dist. of the State of Florida, ss:

On this sixth day of May, A. D. 1871, before me, personally appeared Harrison Reed, governor of the State of Florida, and made oath that he has read the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to these matters he believes them to be true.

(Signed) HARRISON REED.

123 Sworn to and subscribed before me this 6th day of May, A. D. 1871.

[SEAL.] (Signed) PHILIP WALTER,
Clerk U. S. Circuit Court, Northern Dist. of Florida,
5th Judicial Circuit.

UNITED STATES OF AMERICA,
Northern District of the State of Florida, ss:

On the sixth day of May, A. D. 1871, before me, personally appeared Simon B. Conover, treasurer of the State of Florida, and made oath that he has read the above answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information
124 and belief, and as to those matters he believes them to be true.

(Signed) S. B. CONOVER,
Treas'r State of Fl'a.

Sworn to and subscribed before me this 6th day of May, A. D. 1871.

[SEAL OF COURT.] (Signed) PHILIP WALTER,
Clerk U. S. Circuit Court, 5th Judicial Circuit,
Northern Dist. of Florida.

124½ (Indorsed:) Circuit court of U. S. Fifth circuit, northern dist. of Florida. Francis Vose, complainant, vs. Harrison Reed et al., trustees of the internal improvement fund et al., defendants. Filed May 18th, A. D. 1871. J. E. Townsend, cl'k. Papy & Peeler, & J. B. C. Drew, solicitors for defendant.

125 In the United States circuit court, northern district of Florida

FRANCIS VOSE
vs.
HARRISON REED ET AL., TRUSTEES OF THE INternal *internal* improvement fund of Florida.

Robert H. Gamble, comptroller of the State of Florida, and ex-officio one of the trustees of the internal improvement fund of the State of Florida, leave of this court having first been obtained therefor, respectfully shows to the said court:

That Attorney-General Emmons, a solicitor of this court, was the counsel representing this defendant, as well as the other trustees, and that he instructed said solicitor to make for him a seperate answer, as in his, defendant's, opinion, his defense could not be made out in
126 a joint answer, as he based his defense and expected to show his justification for the most part by his opposition to the acts complained of his co-trustees. The said solicitor agreed with him in opinion, and promised that such an answer should be filed, and that he, the said Emmons, would prepare and file the same, and he, the said Emmons, then and there took notes from which to prepare said answer, and further assured this defendant that his presence before the court would not be necessary; and this defendant not being familiar with legal proceedings believed that nothing more was necessary for him to do in the premises, and that his answer would be presented to the court in due time as required by the rule.

That neither Harrison Reed nor J. S. Adams had any authority to answer for this defendant, nor to join him with themselves in their answer, and that the same was done without the authority
127 or consent of this defendant, and until last night, when the matter was brought to his attention by the solicitor for complainant, Gen'l Jackson, was he aware that any such joint answer was in existence.

That as soon as this defendant was informed of the issuing of the attachment he started to repair to Jacksonville, but was informed that the court had adjourned, and that Judge Fraser had left Jacksonville.

And now, by further leave of the court in this behalf obtained, in response to the rule heretofore issued in said court requiring him to show cause why he should not be attached for contempt of the order of injunction, heretofore made herein, he answers and says: That he was not a party, nor did he in any way consent to the conveyance of lands made by his co-trustees to the Florida Improvement Company; but on the contrary, when solicited to sign said conveyance, he absolutely
128 refused so to do, and the same was made and delivered without the signature, participation, or consent of this defendant.

This defendant is informed and believes that said lands have, in pursuance of the order of his honor Judge Bradley, been reconveyed by the said Florida Improvement Company, though the reconveyance thereof has not come under personal notice or observation of this defendant.

Defendant further says, that the conveyance of lands to the Southern Inland Navigation Company was also made without his consent, and when applied to and solicited to sign the same, this defendant positively refused so to do.

Defendant further says that as to the sale of any other lands, since the issuing of said injunction, for coupons, as charged to have been made, he knows nothing of the same. That if any sales of lands were

made, as charged, for coupons, it was without his knowledge or
129 consent.

That this defendant inquired of the treasurer of the board in regard to the character of the funds received by him in payment for lands, and was answered by said treasurer that payment was made in money, and it was only upon such representation from the treasurer that this defendant consented to sign conveyances of trust lands.

That this defendant could not personally examine each payment of funds made to the treasurer of the board, but has taken every reasonable precaution in his power to prevent the alienation of trust lands for other consideration than money since the date of said injunction.

This defendant further says that the governor of the State of Florida, Harrison Reed, some time in the summer or fall of 1871, the precise date defendant is not able to give, contracted with Messers M. A. Wil-
130 liams and S. Swann, of Fernandina, to locate the unsolicited swamp-lands in the State for a compensation of one acre in every fifty so located, to be paid them in what is known as floats.

That this contract was made by the governor under the power and authority vested in him by the first section of an act to secure the swamp and overflowed lands lately granted to the State and for other purposes, approved January 23d, 1851.

That by the second section of said act, it is provided that the expenses of examining and creating said lands shall be paid out of any monies received out of the sale of said lands.

When informed of the contract made by the governor as aforesaid, this defendant, feeling that it was manifestly to the interest of the trust-fund that all the lands granted to the State should be selected, classified, and put upon the market; considering the matter as, under
131 the law, within the p'erogative of the executive, made no objection to the character or amount of compensation; but afterwards, when applied to by the complainant to intervene in the matter on the ground that the compensation given to said Williams & Swann was excessive, and should be paid from the lands by them located, and not from the trust-funds at large, this defendant did bring the matter to the attention of the board, and protested against the further execution by said Williams & Swann of their said contract, unless they should consent to take their compensation out of the lands actually located.

That this defendant has no knowledge of any sales of land made by said Williams and Swann, except of the lands paid them under their said contract, and if any such sales were by them as charged, they were made without his knowledge, connivance, or consent. That this
132 defendant knows nothing of any coalition or partnership, as alledged, between said Williams & Swann and the treasurer and salesman of the board, but this defendant has been informed by the treasurer, J. S. Adams, that no such connection has ever existed between them.

Defendant further says that if the treasurer of the board at any time during the year 1871, or subsequent thereto, exchanged non-tax-paying scrip for coupons to the amount of fifteen thousand dollars, or to any other amount, it was done without the knowledge or consent of this defendant. That no authority was given to said treasurer by the board, at any meeting of said board at which this defendant was present, to exchange non-tax-paying scrip for coupons, but this defendant is informed that such authority was granted by the board at a meeting held in Jacksonville, at which this defendant was not present.

This defendant further says that he has never seen the letter

133 of Feb'y 24, 1871, addressed by the complainant, Vose, to the treasurer, J. S. Adams, that he is aware of, nor was the same ever submitted by the said Adams, at a meeting of the board, as he recollects.

This defendant further says that the sum of $53,500 referred to by complainant has not at any time been under the control of the present board of trustees. Said fund was deposited by the former board with Moses Taylor, of New York, and said Taylor has persistently refused to permit the present board of trustees to have any control or direction of the same. And the said Taylor has refused to give to this defendant, as a member of the board, any information as to the amount or condition of the said fund. This defendant does not deny that money has been received from the Florida R. R. Company or the sinking fund, the exact amount this defendant cannot now state, but this defendant denies

134 that said funds or any portion thereof has ever been in any manner by him to his personal use or benefit, or with his consent, perverted from their proper or legitimate use and purpose under the trust of which he is one of the custodians, except that he did consent to and urged the application of a portion of said funds, some $4,500 in all, to the relief of insane citizens of Florida, who were being cared for in the asylum for the insane, at Columbia, South Carolina, and for feeding the prisoners confined in the penitentiary at Chattahoochee. That the prisoners were represented to be without food, and the State authorities of So. Carolina threatened to turn the Florida patients from the hospital if not paid at once. Respondent considers that this was a diversion of the fund, but says that his course in the matter was dictated by feelings of humanity, and the State is bound to prepay to the board the advances thus made.

135 This defendant further says that he knows of no trust fund taken by any member of the board and substituted with scrip except $1,140 paid Gov'r Reed by M. O. Roberts, for the Florida R. R. Co., which said Reed appropriated and afterwards paid into the treasury of the trust fund in scrip.

He also consented to the payment of three thousand dollars to Papy & Peeler.

This defendant further says that he protested against the attorney-general of the State being retained to defend the board, and any and all moneys paid him for professional services in this behalf were paid under protest of this defendant.

That this defendant did employ Cabell to represent the board at one time in New York, for which service the said Cabell was paid $100.

This defendant denies that the articles of agreement between his co-trustees and the J. P. & M. R. R. Co., ever entered into with his knowledge or consent, but avers that he was at the time out of the State, and on his return protested against the same.

136 And this defendant further says that he was not a party to the consent decree referred to, but that as soon as he heard of the same he insisted that the same be set aside, and has used every means in his power to accomplish that object, and this defendant objects against being in any wise bound by the consent on which said decree was made.

And this defendant further says that he does not deny that the business of said board of trustees has been conducted in the loosest manner as charged. But he says that he has used all possible diligence, as one member of the board, to prevent fraud and abuse of the fund, to have

the board conducted and the books kept in proper and legal manner and form and to discharge the high judiciary powers reposed in him by his official position. That he has always protested against the combination of offices of salesman and treasurer in the hands of one
137 man as subversive of all checks and safeguards.

That many meetings of the board have been held at Jacksonville, and without notice to this defendant, but this defendant has used all diligence to post himself with regard to all actions of the board and protest against any acts done in his absence which in his opinion were violations of the trust.

And this defendant, having fully answered, asks to be discharged from the order attaching him for contempt.

(Signed) FLEMING & DANIELS,
Solicitor' for R. H. Gamble.

138 STATE OF FLORIDA,
Duval County:

Before me, J. E. Townsend, clerk of the above court, personally appeared Robert H. Gamble, one of the defendants in the above-stated cause, who, being duly sworn, says he is acquainted with the contents of the foregoing answer, and that the allegations therein set forth, and the matters and things therein contained, are true in substance and in fact.

(Signed) R. H. GAMBLE.

Sworn to and subscribed before me this 18th Dec., 1872.

(Signed) J. E. TOWNSEND, *Clerk.*

(Indorsed:) Francis Vose vs. Harrison Reed et al., trustees et al. Answer of R. H. Gamble. Filed Dec., 1872. J. E. Townsend, clerk.

139 In the circuit of the United States for the northern district of Florida.

FRANCIS VOSE, COMPLAINANT,
vs.
THE TRUSTEES OF THE INTERNAL IMPROVEment Fund of Florida et al.

This cause came on to be heard on bill, exhibits, answers, depositions, and master's report.

Whereupon it is ordered and decreed that the complainant, Francis Vose, is the holder of one hundred and nint'y-five bonds of the Florida Railroad Company, issued under the provisions of the act of January 6th, 1855, entitled "An act to provide for and encourage a liberal system of internal improvement in this State"; and that there is now owing to him two hundred thousand dollars and upwards, upon the coupons of said bonds which have already fallen due; that W'm H. Wagner is the owner of twelve bonds of the said Florida Railroad Company, and that there is now owing to him seven thousand four hundred and
140 fifty-five dollars upon the coupons of said bonds which have already fallen due; that Frank W. Webster is the holder of four coupons, amounting to one hundred and forty dollars; that W. T. Webster is the holder of one coupon for thirty-five dollars; that S. J. Trumbull, trustee, is the holder of seven coupons calling for one hundred and ninety-nine dollars and fifty cents; that W. J. Hines, trustee, is the holder of thirty-two coupons calling for eight hundred and thirty-four dollars; that A. F. Fuilaysen is the holder of eighteen coupons calling for six hun-

dred and thirty dollars, all of said last-mentioned coupons being due and unpaid, and being coupons of issued by the Pensacola and Georgia Railroad Company; that G. A. Hurlig is the holder of sixteen coupons of the bonds of the Florida, Atlantic and Gulf Central Railroad Company, calling for five hundred and sixty dollars; that W. S. Cowardin is the holder of fifteen coupons of bonds issued by the said Florida Railroad Company, and calling for five hundred and twenty-five dollars; that
141 J. J. McNish and Co. are the holders of five coupons of bonds issued by the Tallahassee Railroad Company, calling for thirty-five dollars, and nin'teen coupons of the said Pensacola and Georgia Railroad Company, calling for four hundred and sixty-nine dollars; all of which said last-named coupons are due and unpaid, and all of which bonds were issued under the provisions of the act of 1855.

(2) Secondly. It is further ordered and decreed that the securities belonging to the sinking fund, provided by said act of 1855, and now held by A. Daggett, esq., receiver, be sold by him by public outcry, in the city of Jacksonville, upon twenty days' notice, to be given by publication through one newspaper in the said city of Jacksonville, and another in the city of Tallahassee; and that the proceeds of said sale be invested in the bonds so held by the said Francis Vose and the said W'm H. Wagner, in the proportion of one hundred and ninety-five to twelve.

142 Thirdly. It is further ordered and decreed that the said receiver shall have power and authority to demand and receive all moneys which may be already due or which may hereafter become due to the said the Internal Improvement Fund of Florida, whether by the purchasers and present owners of the railroads which have been sold under the provisions of said act of 1855, or by any person or body corporate whatsoever, and that it shall be competent for him to make any person or body corporate, who shall contest the validity of any claim which he may assert by virtue of this decree, a party defendant to this suit for the purpose of enforcing the collection of such claim, should the same be adjudged valid, and whenever any moneys shall come into the hands of said receiver, under the provisions of this clause of this decree, it shall be his duty, and he is hereby instructed and empowered, to invest the same in the bonds of the said railroad companies, issued under the provisions of the said act of 1855, in manner and form and in the
143 ratio set out in the second clause of this decree.

Fourthly. It is ordered and decreed that this case be referred to A. Doggett, esq, master, etc., for further investigation and report to this court under the order of reference made at the last term, but more especially to call for and audit all coupons which may be held by persons asserting a lien for the payment of the same against the said internal improvement fund. The said master to give due notice to all parties in interest of the time and place when lists of coupons which may be submitted to him shall be open to investigation, allowing to all such persons the opportunity to object the certified approval of said master upon grounds to be stated in writing, requiring the production when necessary and called for of all coupons the lien of which shall be thus contested. To hear the parties submitting and contesting the same, and report his decision thereon at least thirty days before the next term thereafter this court, to which said decision either party
144 may except under the ordinary rules of chancery practice, and no coupons shall be paid by the trustees of the internal improvement fund except under the order of this court.

Fifthly. It is further ordered and decreed that the injunction hitherto granted to this cause be continued in full force and effect; and that the

appointment of receiver hitherto made be continued for the purpose of that appointment.

(Signed) W. B. WOODS,
Judge.

DEC. 18TH, 1872.

(Indorsed:) Francis Vose vs. Harrison Reed et al., trustees, et al. Decree. Filed Dec. 18th, 1872. (Signed) J. E. Townsend, clerk.

145 FRANCIS VOSE, COMPL'T,
and
THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND, def'ts.

It appearing to the court that a fund has been placed in the hands of the receiver appointed in said cause, produced under the decree rendered in said cause, and it further appearing that said decrees, including the decree which has been rendered at the present term, have been reached through a single complainant and his solicitors:

It is ordered that the sum of five hundred dollars be paid by said receiver to H. Bisbee, esq., jr., and four thousand five hundred dollars to Jackson, Lawton & Basenger, the solicitors of Francis Vose, complainant. Dec. 5th, 1873.

(Signed) W. B. WOOD,
Judge.

(Indorsed:) Francis Vose vs. The Trustees of the Internal Improvement Fund. Filed Dec. 5th, A. D. 1873. (Signed) J. E. Townsend, cl'k, per Philip Walter, dep. cl'k.

146 FRANCIS VOSE, COMPLAINANT,
vs.
THE TRUSTEES OF THE IMPROVEMENT FUND et al., defendants.

It is ordered, adjudged, and decreed that the above entitled cause be referred to A. Doggett, esq., master, etc., for further investigation and report, more especially under the fourth claim of the decree of this court rendered on December 28th, 1872; that he forthwith give notice by circular letter to all persons who have registered coupons with him under the provisions of said decree, that they shall place in his custody and keeping the said coupons so registered with a view to their payment in accordance with the established rule of priority of date; that he forthwith give notice by publication to all persons who may hold coupons of bonds claiming a lien upon the said the internal improvement fund, and which have not been presented; that they shall present the same to him for examination and registry before the first day of April, A. D. 1874, and that if they
147 remain longer in default they shall be debarred from participating in the benefits of the decree rendered by this court in this cause; that said master give due notice of the time and place when he will hold all coupons, whether such as have already been registered or such as may hereafter be registered and placed in his custody, open for the inspection of any party in interest, allowing to such party full opportunity to move that any such coupons be rejected, upon the ground that they have no just claim upon the said fund, and notice to be made upon petition setting out such facts as shall indicate cause for reasona-

ble suspicion; that said master shall enter the cases so made upon a special docket to be kept by him for that purpose; that he shall give due notice to the parties thereto of the time and place when he will receive testimony and hear argument touching the issues made thereon, whether they be issues of law or fact; that he shall have the power to subject any holder of such coupons so challenged to examination
148 under oath as to his title to the same, as to the person from whom he obtained the same, as to any matter whatsoever touching the validity of the same; that he shall apply for and receive from the trustees of the internal improvement fund and the officers of state all books and records relating to the issue of bonds which bore such coupons, or to the payment of the same; that he shall demand from the officers of any railroad company, or any other person whatsoever, any and all books or records relating to the same subject-matters, and shall have power to envoke at any time the process of this court to enforce the production of any such book or record; that such books or records shall be held open for inspection and for reference in the trial of the cases which may be made and docketed, in manner and form as herein provided for; that after hearing the said causes so made, the said master shall deliver his decision in writing, from which decision either
149 party may enter an appeal to this court within thirty days from the rendition thereof; and it shall be the duty of the said master to report the said cause, with all of the testimony and his action thereof. In default of such appeal, his said decision shall be final and conclusive.

(2.) It is further ordered, adjudged, and decreed that on the 1st day of July, 1874, the said master shall submit to either judge of this court a statement of the balance of moneys which may be at that date in his hands, produced by the decrees in this cause, which have already been rendered, and applicable to the payment of said coupons, and also a statement of coupons then in his custody, which, from their priority, shall be entitled to said money, and it shall be competent for the said judge to direct the payment of the same.

(3.) It is further ordered and decreed that the said master shall cancel all coupons now in his custody which have been paid, and all
150 coupons which he shall hereafter pay, as they shall be paid, keeping an accurate account of the same, to be supported by the cancelled coupons themselves as vouchers.

(4.) It is further ordered, adjudged, and decreed that the said master shall enquire and report from the testimony already taken in this cause, and from testimony hereafter to be taken, if necessary, the amount which should be decreed against any person defendent to this cause for damages resulting to said complainant and others from any acts violative of the trusts created by statute of January 6th, 1855, and that his report be filed with the clerk of this court at least ninety days before the next term thereof, and that immediate notice of such filing be given to such party defendent.

(5.) It is further ordered, adjudged, and decreed that the contracts or agreements entered into by the trustees of the internal improve-
151 ment fund with the corporation known as the Southern Inland and Navigation and Improv'ment Company be rescinded, and the same are hereby declaired to be null and void, and the lands undertaken to be conveyed, or contracted to be conveyed, shall be restored to the said internal improvement fund, or be subjected to sale by the agents

appointed by decree of this court rendered during this term, in accordance with provisions of said decree.

(Signed) W. B. WOOD, *Judge.*

(Indorsed :) Francis Vose vs. The Trustees of the Internal Improvement Fund. Filed Dec. 4th, A. D. 1873. (Signed) J. E. Townsend, cl'k.

152 In the circuit court of the United States, northern district of Florida. In equity.

FRANCIS VOSE
vs.
THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND et al.

Please take notice that on the 12th instant, at ten o'clock, a. m., or as soon thereafter as counsel can be heard before said court at Jacksonville, I shall move for the dissolution of the injunction heretofore granted in the above cause so far as the said injunction affects the present board of trustees upon the following, among other grounds:

1st. Because no case is made by complainant's bill, or supplemental, for an injunction against the present board of trustees.

2. Because the longer continuance of said injunction is prejudicial to the interests of said trust fund and to the interests of the State.

Dated May 10, 1875, *May* 10, 1875.

(Signed) JAMES M. BAKER,
Att'y for Def'ts.

(Indorsed:) Came to hand this 10th May, A. D. 1875. Served a true copy of the within notice upon Francis Vose at Jacksonville within the northern dist. of Florida this the 10th day of May, A. D. 1875, at 8 p. m.

(Signed) S. CONANT,
U. S. Marshall.

Service, 2.00.

153 In the 5th circuit court of the U. S. for the northern district of Fl'a.

FRANCIS VOSE & OTHERS
vs.
THE FLORIDA RAILROAD. } Demurrer.

The demurrer of the Florida R. R. to the bill of complaint filed by the above-named complainants.

This complainant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are and herein and thereby set forth and alleged, doth demur thereto and for cause of demurrer shows that the said complainant hath not by his said bill made such a case as entitles him in a court of equity and any relief from or against this defendant touching the matters contained in the said bill or any of such matters.

And for cause of demurrer sayeth, it appears that the said Francis Vose and W. H. Wagner are improper parties to said suit and
153½ have no interest in common with said Aristides Doggett, said receiver, and that the joinder of said parties by the said receiver

in said suit is contrary to the practice of this court and without the authority thereof.

2. That it does not appear from the said bill of complaint that said Aristides Doggett, such receiver, was authorized and directed by this court to commence said suit by the filing of said bill of complaint; and

3d. That the said plaintiffs are not all residents of other States than that in which the defendant resides.

4. That Aristides Doggett, one of the plaintiffs, being a citizen of the same State as defendant, cannot bring his suit in a court of the United States.

5. That there is a complete remedy by action at law in the courts of the State for the subject-matter of the bill if the defendant is indebted as alledged.

(Signed) JAMES M. BAKER,
Attorney for Def't.

Wherefore, and for divers other good causes of demurrer appear-
154 ing in the said bill of complaint, this defendant doth demur to the said bill and to all matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and they pray to be hence dismissed with their reasonable costs in this behalf sustained.

I certify that in my opinion the foregoing demurrer of the Florida Railroad Company, defendant, to the bill of complaint of Francis Vose, W. H. Wagner and Aristides Doggett, receiver, is well founded in law, and proper to be filed in the above cause.

(Signed) JA'S M. BAKER,
Att'y, &c.

UNITED STATES OF AMERICA,
Northern dist. of Florida:

David L. Yulee, vice president of the Atlantic, Gulf & West India Transit Co., being sworn, says that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

(Signed) D. L. YULEE.

Sworn to & subscribed before me, this 26th day of Feb'y, A. D. 1873.

(Signed) CHA'S W. LEWIS,
U. S. Commissioner for Northern Dist. of Florida.

(Indorsed:) Francis Vose and others vs. Florida R. Road Company. Demurrer. Filed March 3d, 1873. (Signed) J. E. Townsend, clerk. Ja's M. Baker, att'y for defendant.

155 WEDNESDAY MORNING,
December 9, *A. D.* 1874.

The court met pursuant to adjournment. Present, Hon. Philip Fraser, judge.

The court was opened in due form by the crier, and proceeded to business.

* * * * * * *

FRANCES VOSE
vs. } In chancery.
THE FL'A R. R. CO.

By consent of the parties the demurrer in this cause will be set down for hearing at this term.

156 FRIDAY MORNING,
December 11th, A. D. 1874.

The court met pursuant to adjournment. Present, Hon. Philip Fraser, judge.

The court was opened in due form by the crier, and proceeded to business.

* * * * * * *

FRANCES VOSE
vs.
FLORIDA R. R. Co. } In chancery. Argument on demurrer.

The argument in this cause having continued until the hour of adjournment, it is ordered that this court stand adjourned until to-morrow morning at ten o'clock.

157 In circuit court United States, northern district of Florida.

FRANCIS VOSE ET AL. AND ARISTIDES DOGGETT
vs.
THE FLORIDA R. R. COMPANY. } In chancery.

And now comes the above named plaintiffs and move to amend their said bill filed in this cause by striking out the names of Francis Vose & William H. Wagner, two of the above named complainants, so that the above named Aristides Doggett, receiver, may be the sole complainant in the said bill.

JACKSON, LAWTON & BASSINGER, AND J. B. C. DREW,
Compl'ts Solicitors.

DECEMBER 11th, 1874.

158 TUESDAY MORNING,
December 22nd, A. D. 1874.

Court met pursuant to adjournment. Present, Hon. Philip Fraser, judge.

Court was opened in due form by the crier, and proceeded to business.

* * * * * * *

FRANCIS VOSE ET AL.
vs.
THE FLORIDA R. R. Co. } In chancery. Decree, &c.

Now at this day this cause came on to be heard upon the demurrer of the defendant to the bill of complaint filed in this cause, and the same was duly argued by counsel; and thereupon and after due consideration thereof it is ordered, adjudged, and decreed by the court that the said demurrer be, and the same is hereby, sustained, and that the said bill of complaint be, and the same is hereby, dismissed for want of equity.

PHILIP FRASER. *Judge.*

159 FRANCIS VOSE ET AL.
vs.
THE FLORIDA R. R. Co. } In chancery.

Now at this day comes the said complainants in this cause, by their

solicitors, and pray an appeal from the judgment of the court heretofore entered in this cause; which said appeal is granted by the court upon such terms and conditions as shall seem meet and proper in the premises.

160 WEDNESDAY MORNING,
January 6, *A. D.* 1875.

Court met pursuant to adjournment. Present, Hon. Philip Fraser, judge.

Court was opened in due form by the crier, and proceeded to business.

* * * * * * *

FRANCIS VOSE ET AL.
vs.
FLORIDA R. R. CO. } In chancery.

Now at this day comes J. B. C. Drew, esqr., one of the counsel for said complainants in this cause, and asks leave to affect the appeal in this cause. Ordered, That said appeal be granted if the said complainant shall, within ten days from the adjournment of this court, file with the clerk a good and sufficient bond in the sum of two thousand (2,000) dollars, conditioned for the payment of all costs and damages.

161 In circuit court United States, northern district of Florida.

ARISTIDES DOGGETT, RECEIVER IN THE CASE of Francis Vose et al.,
vs.
THE TRUSTEES OF THE INTERNAL IMPROVEMENT Fund of Florida.

FRANCIS VOSE ET AL.
vs.
THE FLORIDA RAILROAD COMPANY.

To the honorable Philip Fraser, judge of the circuit court of the United States for the northern district of Florida:

The petition of Aristides Doggett, receiver, respectfully shows that on the 22nd day of December, 1874, the above-entitled cause came on for hearing upon original bill and demurrer; that a motion was made on the part of the complainants to amend the said bill by striking
162 out the names of Francis Vose and William H. Wagner as parties plaintiff; that, after argument heard, the court sustained the demurrer and dismissed the bill upon the grounds (1st) that under the provisions of section of the act of Jan'y 6th, 1855, commonly known as the internal-improvement act, said defendant could be required to pay only one-half of one per cent. semi-annually to the sinking fund created by said act upon the amount of first-mortgage bonds issued under the provisions of said act outstanding at the time such requisition should be made, and not upon the entire amount of bonds as originally issued by the said company, and that therefore the bill filed in said cause was without equity to sustain it; and (2nd) because of the misjoinder of the said Vose and the said Wagner as parties plaintiff to the said bill. After said decree had been pronounced, the attention of the court being directed to the fact of said pending motion having been made to amend the said bill by striking out the

163 names of the said Vose and Wagner as parties plaintiff, the court observed that it was needless to take that matter into consideration, inasmuch as the demurrer for want of equity had been sustained, and the bill had been dismissed for want of equity. Your petitioner further show that they are desirous to take the said case to the Supreme Court of the United States by appeal for revision, and respectfully pray that an order may be granted to that effect.

A. DOGGETT,
Receiver.

Dated Jan'y 14, 1876.

(Indorsed:) In circuit court United States. Frances Vose et al. vs. Florida R. R. Co. Petition for appeal. Filed this 14th day of January, A. D. 1876. Philip Walter, clerk.

164 In open court at Jacksonville, Fla., January 14, 1876, on reading and considering the foregoing petition, it is ordered that the said petitioner have leave to enter an appeal in accordance with their prayer upon giving a bond with two sufficient sureties, conditioned to pay all costs if they should fail to make their plea good, said bond to be in the sum of one thousand (1,000) dollars.

PHILIP FRASER, *Judge.*

Jan'y 14, 1876.

165 Know all men by these presents that we, Aristides Doggett, receiver, D. G. Ambler, and Thos. H. Maxey are held and firmly bound unto the Florida R. R. Company in the full and just sum of one thousand dollars, to be paid to the said Florida R. R. Company, certain att'y, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 15th day of January, 1876.

Whereas, lately, at a stated term of the circuit court of the United States for the northern district of Florida, to wit, the December term of said court, in the year 1874, and in a suit depending in said court between Aristides Doggett, receiver in the cause of Francis Vose vs. Trustees of the Internal Improvement Fund of Florida, against
166 the Florida Railroad Company, and a decree was rendered against the said Aristides Doggett, receiver, and the said Aristides Doggett, receiver, having taken an appeal to reverse the said decree in the aforesaid suit, and a citation directed to the said Florida Railroad Company, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at the city of Washington the second Monday of October, 1876:

Now the condition of the obligation is such that if the said Aristides Doggett shall prosecute said appeal to effect, and answer all
167 damages and costs if the said Aristides Doggett fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ARISTIDES DOGGETT, [L. S.]
Receiver.
D. G. AMBLER. [L. S.]
THO'S H. MAXEY. [L. S.]

Sealed & delivered in presence of—
F. A. POUILLETT.
D. G. LOVE.

Approved.

PHILIP FRASER, *Judge.*

(Indorsed:) Francis Vose et al. vs. Fla. R. R. Co. Bond. Filed this 15th day of Jan'y, A. D. 1876. Philip Walter, clerk.

168 The United States of America to the Florida Railroad Company, greeting:

You are hereby cited and admonished to *us* and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, persuant to an appeal entered in the clerk's office of the United States circuit court for the northern district of Florida, wherein Aristides Doggett, receiver in the case of Francis Vose against The Trustees of the Internal Improvement Fund of Florida, et al., Francis Vose et al. is plaintiff, and you are defendant, to show cause, if any there be, why the decree rendered against the said plaintiff, as in the petition for the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Wait, Chief Justice of the
169 Supreme Court of the United States, this nineteenth day of January, in the year of our Lord one thousand eight hundred and seventy-six.

(Signed) PHILLIP FRASER,
Judge of the Circuit Court of the United States for the Northern District of Florida.

On this nineteenth day of January, A. D. 1876, personally appeared James B. C. Drew before me, and makes oath that he delivered a true copy of the foregoing citation to James M. Baker, esq., the solicitor of record for the defendant, on the 19th day of January, 1876.

(Signed) JAMES B. C. DREW.

Subscribed and sworn to before me this 19th day of January, 1876.
PHILLIP WALTER,
Clerk United States Circuit Court Northern District of Florida.

170 UNITED STATES OF AMERICA,
Northern District of Florida, ss:

I, Philip Walter, clerk of the circuit court of the United for the northern district of Florida, do hereby certify that the foregoing contains a true & perfect transcript of the record and proceedings in a cause determined in said court, wherein Aristides Doggett, receiver in the case of Francis Vose vs. The Trustees of the Internal Improvement Fund of Florida, Francis Vose et al. are plaintiffs, & The Florida Railroad is defendant.

In testimony whereof I hereunto set my hand and affixed the seal of said court, this twentieth day of January, A. D. one thousand eight hundred and seventy-six, and of our Independence the one hundredth year.

[SEAL.] PHILIP WALTER,
Clerk.

171 Supreme Court of United States.

ARISTIDES DOGGETT, RECIVER, APPELLANT,
vs.
THE FLORIDA RAILROAD COMPANY, APPELLEE. } No. 389.

And afterwards, to wit, on the 22nd day of December, A. D. 1877,

before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Aristides Doggett, receiver, appellant, by his solicitor James B. C. Drew, and says that in the record and proceedings aforesaid there is manifest error in this, to wit: the court below erred in sustaining the demurrer to the bill of complaint herein, and in dismissing said bill of complaint of the said Aristides Doggett, receiver, and in refusing to grant the relief prayed for in said bill.

And the said Aristides Doggett, receiver, prays that the decree
172 dismissing said bill may be reversed, annulled, and altogether held for naught; and that such order may be made herein as the nature of this case may require.

JAMES B. C. DREW,
Counsel for Appellant.

(Indorsed:) No. 389. 1877, Octo. term. Supreme Court of United States. Aristides Doggett, receiver, appellant, vs. The Florida Railroad Company, appellee. Assignment of errors. Filed 31 December, 1877. James B. C. Drew, counsel for appellant.

(Indorsement on cover:) No. 124. Aristides Doggett, receiver, appellant, vs. The Florida Railroad Company. N. Florida C. C. U. S. Filed 9th June, 1876.

P. F. McBREEN, Law and Job Printer, 14 and 16 Ann St., N. Y.

Supreme Court

OF THE UNITED STATES.

ARISTIDES DOGGETT, Receiver, &c.,
Appellant,
vs.
THE FLORIDA RAILROAD COMPANY,
Respondent.

STATEMENT OF THE CASE AND BRIEF FOR APPELLANT.

Appeal from judgment or decree of the Circuit Court of the United States for the Northern District of Florida, in favor of appellees, sustaining a demurrer to the bill of complaint and dismissing the same for want of equity. (Fols. 153 to 154, 158.)

Statement of the Case.

The suit is brought by Francis Vose, of New York, William H. Wagner, of South Carolina, and Aristides Doggett, Receiver in Chancery, under a decree of said Circuit Court, against the Florida Railroad Company, to compel the payment to the said Doggett, as Receiver of the Internal Improvement Fund of Florida, the amount of one-half of

one per cent. on the entire amount of bonds issued by the said railroad company in accordance with the provisions of an Act of the State of Florida, entitled, "An Act to provide for and encourage a liberal system of Internal Improvements in this State," passed January 6th, 1855.

The bill of complaint alleges:

That on November 3d, 1870, complainant Vose filed his bill in said Circuit Court against Harrison Reed and others, trustees of the Internal Improvement Fund of Florida, complaining that he was the owner of 195 first-mortgage bonds issued by the Florida Railroad Company under the provisions of said Act; that the company failed to provide the interest and the sum of one-half of one per cent. per annum on the entire amount of the bonds issued by it as required by said Act, and had been so in default for about three years, when the said trustees took the said road into their possession and sold the same for $323,400 to Edward N. Dickerson and his associates, it having been announced as part of the terms of sale that said sale was made subject to all the provisions of said Act, and, among others, to the requirements of sections second and third of the same. (Folios 2 and 3.) That the trustees, in accordance with section third of said Act, determined to apply the amount received from the purchasers to the purchase and cancelling of outstanding bonds of said company, and not to incorporate the same with the sinking fund provided by the said Act for the full discharge of the said bonds and interest; and, by said application, all of the outstanding bonds of said company were purchased and cancelled, except 228, of which the complainant Vose owned 195, and the complainant Wagner twelve. (Folio 4.)

The greater part of the bonds so purchased by the trustees were purchased from holders in the State of Florida, and, at the time of the purchase, provision was made for the payment of the past-due coupons to the holders and sellers of said bonds in lands vested in said trustees by the provisions of said Act. But no offer of payment of said past-due coupons has been made to the holders of said first-mortgage bonds who were residents of the State of New York, and the purchase and payment of said bonds at twenty per cent. of the principal was only to be made on condition that such bonds, with all the coupons on the same, should be surrendered with the bonds. (Fol. 5.)

The purchasers of said road, although they purchased and took said road subject to all the conditions of said sale under the provisions of said Act, failed to comply with its conditions and to continue the payment of one-half of one per cent. semi-annually to the sinking fund, on the entire amount of bonds isued by said company. (Fol 6.)

The bill then states that said bill of complaint filed by said Vose charges the trustees with acts of nonfeasance and malfeasance, among others, in failing to receive and demand from the present owners of said railroad said sum of one-half of one per cent. on the entire amount of bonds issued by said railroad company.

That the corporate name of the said Florida Railroad Company was changed to that of the Atlantic Gulf and West India Transit Company, but that said change of name in no wise affected the title or removed the liabilities of said Florida Railroad Company, and the said company holds the property subject to the conditions and terms of said sale, and to the payment of said sum of one-half of one per cent. until the entire amount of outstanding bonds should be fully paid and discharged.

The bill then alleges the decree of Judge Fraser appointing complainant, Doggett, receiver of all the moneys and securities belonging to said trust fund, in the hands of said trustees, and giving power to the said receiver to sue for and collect the same, and that at a final hearing of said cause a decree was rendered by Judge Woods, directing that the complainant, Doggett, be continued as receiver and conferring power upon said receiver to demand, sue for and receive all moneys now due or which might thereafter become due to said Internal Improvement Fund (fols. 9 to 11).

That the said receiver has demanded from the trustees of said Internal Improvement Fund all the money due to said fund from the purchasers of said Florida Railroad, and that said trustees have wholly failed to pay said sum of money, pretending at times to claim that the purchasers have paid into said fund all that can be justly claimed of them under said terms of sale, and at other times that the purchasers should only be called upon to pay one-half of one per cent. semi-annually on the bonds actually outstanding, viz.: 228 in number. The bill then avers in substance that the provisions of sections second and third of said Act, under which the road was sold, required that the purchasers continue the payment of the one-half of one per cent. semi-annually on the entire amount of the bonds issued by said railroad company, which is alleged to be 1616 (fols. 11 to 14).

Other pretences of said trustees are then set forth with reference to the payment into said fund, and the amount required to be paid, and the bill concludes with the prayer among other things that the company may be adjudged and decreed liable to pay into said fund the amount of one-half of one per cent. on the entire amount of bonds issued (fol. 19).

The defendants demurred to the complaint generally, for want of equity, and assigned the following causes or grounds of demurrer, viz.:

1. That it appears that the said Francis Vose and W. H. Wagner are improper parties to said suit, and have no interest in common with said Aristides Doggett, said receiver, and that the joinder of said parties by the said receiver in said suit is contrary to the practice of this Court and without the authority thereof.

2. That it does not appear from the said bill of complaint that said Aristides Doggett, such receiver, was authorized and directed by this Court to commence said suit by the filing of said bill of complaint.

3. That the said plaintiffs are not all residents of other States than that in which the defendant resides.

4. That Aristides Doggett, one of the plaintiffs, being a citizen of the same State as defendant, cannot bring his suit in a Court of the United States.

5. That there is a complete remedy by action at law in the Courts of the State, for the subject matter of the bill, if the defendant is indebted as alleged.

The Court sustained the demurrer and from the decree sustaining said demurrer, and dismissing the bill, the complainants appeal to this Court.

During the argument of the demurrer, a motion was made by complainants to amend the bill by striking out the names of Francis Vose and William H. Wagner, but no decision was rendered thereon at the time.

After the decision on the demurrer, the attention of the Court was called to the fact that no decision

of said motion had been rendered, when the Court observed that it was needless to take that matter into consideration inasmuch as the demurrer, *for want of equity*, had been sustained, and the bill had been dismissed *for want of equity* (fol. 163).

BRIEF.

The question in this case is, whether the defendants, as purchasers, or standing in the place of the purchasers, of the property and franchises of the company of the same name which had the title prior to the foreclosure and sale set forth in the bill, are bound to keep up the contribution of one per cent. per annum on the total amount of bonds issued by such prior company, under the provisions of the Florida Internal Improvement Act of January 6, 1855. A satisfactory solution of this question will be most likely to be reached if we first take a general view of the Act.

I.

The 1st section creates a fund out of certain resources of the State of Florida, consisting of public lands and the proceeds thereof. This is designated as "The Internal Improvement Fund, of "the State of Florida, to be strictly applied accord-"ing to the provisions of the Act." The 2d section places this fund in the hands and under the control of certain State officers, who are constituted *ex officio* trustees, and gives to them power to sell the lands,

invest the proceeds and the accruing interest, and to pay out of the same fund "the interest from time to time, as it may become due, on the bonds to be issued by the different railroad companies, which should issue bonds under the authority of the Act." The second section contains nothing else descriptive of this fund, or the purposes for which it can be used. The 3d section sets forth, first, the mode of creating the railroad bonds, then distinctly pledges the same fund to the payment of interest on them, and deals no further with the fund or its object. On looking through all the provisions of the Act, nothing is found which authorizes the appropriation of this fund, or any part of it, to any other purpose than the payment of interest on the railroad bonds.

It may, therefore, be taken as certain that "The Internal Improvement Fund," created by the State from its own resources, was not pledged, nor can it be lawfully used, for any purpose except paying interest.

II.

We think it equally plain that "The Internal Improvement Fund" was not intended to be the primary debtor for the payment of interest on the railroad bonds, but was and is intended as a subsidiary means of payment for the better security of the bondholders. This is clear, because (1) the bonds themselves and the coupons attached are legal obligations to pay such interest semi-annually; (2) the 12th section, in its last clause, and the 13th section, clearly express this obligation; (3) the 3d section makes it the duty of the trustees of the

Internal Improvement Fund to foreclose and sell the railroad and property of any company which is in default for not paying such interest; (4) the 13th section so qualifies the general pledge contained in the 3d as to charge the fund only with "*the deficiency of interest*," and the same section in its terms requires the railroad company to pay the interest on their bonds. See also sections 14 and 27. The argument need not be pursued upon a proposition so plain as this.

III.

We come to a fund of a different character which the act constitutes and places under the control of the same trustees. This is designated in sections 2, 3, 12, 13 and 27 as a "sinking fund," and is composed of contributions to be made by the several railroad companies which accept the provisions of the Act.

Section 2 authorizes the trustees to demand of each company a semi annual-contribution equal to one-half of one per cent. *on the entire amount of bonds issued* by such company, and to invest such contribution and the accumulations of interest on the same. Section 3 charges this contribution as a lien on the property of each company in the clause, which makes it the duty of the trustees to take possession and sell the railroad franchises, &c., in case of failure to contribute as so required. Section 12 in express words declares that each company shall make such payment, describing it as "one-half per cent. on the amount of indebtedness or bond account every six months, as a sinking fund to be invested" &c.

IV.

The nature and uses of the "sinking fund" are next to be considered. The Act does not in any exact language set forth what is to be done with it. But in view of the general purpose of the statute, which was to strengthen and give credit to the bonds of railroad companies, to be issued for the construction of their roads; considering also that the sinking fund was to be made up wholly by contributions from the companies themselves, it cannot be doubted that the final redemption and extinguishment of the bonds was the purpose in view, and that such fund could not be lawfully applied to any different purpose.

It is, perhaps, at first thought, a more difficult question whether, in any case, the contributions of any one company to the sinking fund can be used to pay the principal or interest of the bonds of other companies which are in default. The affirmative of this question implies that the contributions of all the companies go into a common or consolidated fund, in the nature of a mutual insurance, the effect of which must be that the strong and solvent companies must take care of those which are insolvent or weak. But, on examination, such a construction will be found altogether inadmissible. While no express words of the Act appear to favor it, there are provisions decisively against it. In the 3d section, it is provided, that, on "*the failure, on the part of any railroad company, accepting the provisions of the Act*," to pay the interest on its bonds or make its contributions to the "*sinking fund*," it shall be the duty of the trustees to take possession and *sell the railroad and property of such company.* Therefore, the default of any one company in respect to interest is not to be cured by drawing upon the

contributions of another company or other companies, but the defaulting company is to be sold out.

And again, the proceeds of the sale are to be used in the *purchase and cancellation* of the bonds of the defaulting company, or in the alternative, and at the option of the trustees "*incorporated with the sinking fund.*" The meaning of this is, that the proceeds of the sale may be used at once for the retirement of the bonds of such company, or placed in the sinking fund *for the same ultimate purpose.* Any other construction would devote the proceeds to either of two purposes totally irreconcilable with each other. The sale is to be made for the payment of the bonds of the company foreclosed. But the bonds may not be due, and may be incapable of purchase and cancellation. Therefore, the object in view may be accomplished by placing the proceeds in the sinking fund, there to accumulate, and be ultimately applied for the benefit of the holders of the bonds of the sold-out company. This view necessarily characterizes the sinking fund into which the proceeds of the sale may be "incorporated" as a fund in respect to which a separate account is to be kept of the contributions of each company, in order that they may be ultimately applied to the obligations of such company. Otherwise the Statute certainly would not allow the proceeds of the sale of the property of a company to be incorporated or consolidated into and with the semi-annual half per cent. contribution of such company. Assuming, as we must, that the proceeds of a sale belong to the holders of the bonds of the foreclosed company, the incorporation or consolidation of such proceeds with the contributions, impress the same character on the fund as thus consoldiated. In other words, the semi-annual contributions of any company to the sinking fund must be credited to that company, and, in case of a sale, must go with the proceeds of sale to the redemption of its obligations.

The foregoing discussion leads to two main conclusions: 1. The State has provided an "*Internal Improvement Fund*" from its own resources, and pledged it in the nature of security for the payment of interest only on the bonds to be issued by the railroad companies accepting the provisions of the statute, the companies themselves being bound generally and primarily to pay their obligations, both principal and interest. 2. As a further basis of credit for the railroad bonds, the Act created a sinking fund for the redemption both of principal and interest, to be composed of contributions over and above interest equal to one per cent. per annum on the amount of the bonds of each company, and each company is entitled to the ultimate benefit of so much of this fund as it shall contribute, together with the accumulations on such contributions. The policy of establishing both the funds was to give greater credit to the bonds, and thus promote internal improvement in the State.

V.

The particular question now to be considered, is whether the purchasers of the property and franchises of a railroad company which has been foreclosed and sold out under the statute for default in paying its interest or its contributions to the sinking fund, are bound to continue the contributions equal to one per cent. per annum on the *whole issue of its bonds*, although a part of such bonds have been purchased and cancelled with the proceeds of the sale, the other part being outstanding.

As already mentioned, in case of a sale under the 3d section of the Act, the trustees are required to

use the proceeds in "the purchase and cancellation" of outstanding bonds, or to incorporate such proceeds with the sinking fund. Inasmuch as the bonds are a lien upon the property sold, it is very obvious that the proceeds of sale must be paid out upon the same bonds or in some form, and at some time, used for their extinction. It is quite as obvious that such proceeds belong to all the holders of the bonds, without any difference or discrimination between them. Now, in a case like the present, when the proceeds of sale are not enough to make more than a part payment of the bonds, have the trustees a right to apply all the proceeds to the payment and extinguishment of a portion of the bonds, leaving the other portion not only outstanding and unpaid, but deprived of the means of enforcing payment? The property of the sold-out company is, of course, exhausted by the sale, and nothing could be more unreasonable and unjust than to hand over the whole price paid at the sale to some of the bondholders, leaving the others entirely unpaid. It is too plain for discussion, that if the proceeds of such a sale are to be used as payment upon bonds in the *exact legal sense of payment*, they should be divided *pro rata* among all the bondholders.

What, then, is the significance of the words "purchase and cancellation," as used in the 3d section of the statute? The *purchase* of a bond, in the exact sense, implies that the buyer acquires the title and holds the instrument as an obligation against the maker. To *cancel* a bond means, in an exact sense, to extinguish it. Thus the two words are literally opposed in meaning to each other, although they are coupled together as a single expression of what may be done with the bonds. To give effect to both each must yield something to the other. In the actual situation which we are con-

sidering, the trustees purchased a part of the bonds by using the very funds which ought to go toward the payment of the whole of them. This implies, I think, not that they are *paid*, or that they are continued as full obligations, but that they go into a common fund which belongs alike to all the bondholders, to remain there until the final settlement between the fund and the bonds. At the maturity of all the bonds, if the fund should be increased by additions of sufficient amount to pay all the bonds, those outstanding would be paid off and those previously purchased with the fund would be simply cancelled. In this view the bonds are purchased in a qualified sense, because, instead of being absolutely extinguished, they are turned over to a sinking fund, and this in a sense of the word not at all unknown in the management of such funds. On the other hand, they are cancelled or extinguished in a qualified sense, because the bonds thus situated cease to be general obligations, to be paid off like the other bonds still outstanding.

In short, they are purchased only in the sense that they are not deemed to be immediately extinguished. They are cancelled only in the sense that they are no longer debts in the proper sense, and will be ultimately retired without further payment.

These views are confirmed by the alternative mode of disposing of the proceeds of a sale under the 3d section. The trustees are authorized to "incorporate" them with the sinking fund which, as originally constituted, consists of the one-half per cent. semi-annual contributions. But, inasmuch as the moneys arising from the sale, instead of being so placed in that fund, were used in taking up by negotiation a portion of the bonds, it would seem to follow that the bonds so "purchased" should be turned over to the fund and used as a part of it in

the final settlement between the fund and all the bonds. Otherwise the statute has two irreconcilable meanings, according to one of which the proceeds of a sale "incorporated" with the sinking fund will go toward the ultimate payment impartially of all the bonds, and according to the other, of which a portion of them are already paid and extinguished, by using all of such proceeds in the so-called purchase and cancellation of that portion, leaving the others unpaid and outstanding. The meaning is both harmonious and just, if we say that either the proceeds of sale, or the bonds taken in by using the proceeds, go into the fund, according to the choice made by the trustees in adopting one or the other mode of proceeding. If all the bonds are left outstanding, and the proceeds of sale are placed in the fund for the benefit of them all, it is certainly a just proceeding and according to exact legal rights. But, on the other hand, it may be wise and expedient to buy or take into a fund a portion of the bonds at a large discount, *provided, and only provided*, that such a measure must not be understood as reducing the basis of contributions to the original sinking fund, and destroying or diminishing the chance of ultimate payment of the bonds left outstanding.

The second section of the Act authorizes the trustees to demand and receive from the railroad companies one-half of one per cent. on the *entire amount* of their respective issues of bonds; and the 3d section, in providing for the case of a sale, requires the purchasers to assume and "continue" the payment of that contribution to the sinking fund "*until all the outstanding bonds are discharged.*" In the actual case before us, the trustees exhausted the proceeds of the sale in purchasing in the largest part of the bonds, leaving for the holders

of those outstanding no resource at all events for the principal of their debts, except these semi-annual contributions; and if this fund is to consist only of contributions made on the basis of the amount of bonds outstanding, it will be insufficient, even with its prospective accumulations, to pay them until long after their maturity. And this is assuming that the State Improvement Fund is and will continue to be solvent, and will take care of the accruing interest. But that fund is insolvent, as such being the case the semi-annual contributions to the sinking fund must be applied to interest, without ever reaching the principal. The "sinking fund" is not established by the Act any more for the payment of principal than interest. It is probably true that after a sale the Internal Improvement Fund ought to keep down the interest if it can, on the ground that the debtor company has ceased to exist. But holders of the bonds are entitled to interest as well as principal, and if the State Fund cannot pay it, the Sinking must pay it if it can.

In every point of view it seems to us that the purchasers of the property and franchises of the Florida Railroad Company are bound to keep up the semi-annual contribution of one-half per cent. based on the entire issue of bonds. If we consider the bonds purchased by the trustees as belonging in effect to the sinking fund, and representing in that situation the proceeds of the foreclosure and sale, then they are in the nature of an investment of those proceeds, and with exact legal propriety they continue to be a basis of the semi-annual contributions. And even if we consider the bonds so purchased as paid and extinguished to all intents and purposes, that seems to afford no reason for reducing the contribution to the sinking fund until all the bonds are paid or provided for. These payments to that fund, it

must be kept in mind, are not in the nature of interest or principal due or owing upon the bonds. They are contributions over and above and outside of the bonds to a special fund. Of course when all the bonds are called in and extinguished there is no longer any occasion for the existence of such a fund, and the payment to it will cease. But until then, or at all events until full provision is made for all the outstanding obligations, the calling in of a part of them does not seem in the least degree to change the rule or measure of contribution.

It is not questioned that if the proceeds of sale had been incorporated with the sinking fund, leaving all the bonds outstanding, or if they had been used to make a partial payment equally on all the bonds, the assumption of the purchasers to pay into the fund semi-annually a sum equal to one-half per cent. on the entire issue would have continued in full force. But it can make no difference in principle whether the whole bonded debt is reduced by part payment of all the bonds, or by full payment of some of the bonds, leaving others unpaid. A sinking fund is always created to pay a debt, and so long as any part of the debt remains unprovided for, the payment into the fund as established by any regulation or law ought to be made without diminution.

The purpose of the preceding observations has been to show the reasonableness and justice of the claim that the purchasers of the property and franchises of the sold-out company should pay to the sinking fund the one-half per cent semi-annually on the whole issue of bonds. It only remains to say that this claim is sustained by the language of the statute. The second section, as already mentioned, requires each railroad company to pay to the sinking fund one-half per cent. semi-annually on the

"entire amount" of the bonds issued by such company. This requirement, by itself, of course, only prescribes the obligation of a company prior to foreclosure and sale; but the third section, in providing for the case of a defaulting company whose property is sold, enacts that such sale "shall be conditioned that the purchasers shall be bound *to continue* the payment of one-half per cent. semi-annually to the sinking fund *until* all the outstanding bonds are discharged." The meaning of this appears to be plain: the duty of the company, before being sold out, is to make the payment on the entire amount of its bonds issued. Clearly a partial payment of all its bonds would not change the obligation. The assumption of the purchasers is to *continue* such payment until all the bonds are discharged. To continue the payments can only mean the same payments which are required of the company before sale.

In the decision of the learned Judge now under review, an adverse conclusion is reached founded entirely upon a criticism of the language of the twelfth section of the Act. This, and the second section, are those which create, establish and define the sinking fund; and we agree that both should be construed as having one meaning. But looking at them together, the rather obscure expression in section 12, "On the amount of its indebtedness, or (or on) bond account," is dominated and controlled by the very clear and unambiguous words: "On the entire amount of the bonds issued," as found in section two, and the meaning of the whole is, that the total amount of bonds issued is the basis of contribution to the sinking fund.

And again, both these sections, considered by themselves, speak only of a situation *before default, foreclosure and sale*, when all the bonds of a com-

pany are outstanding; and in such a situation they prescribe the rule of contribution to the sinking fund. In such a situation the words, "Entire amount of bonds issued," in section 2, and the words, "Amount of indebtedness or bond account," in section 12, mean, of necessity, the same thing. Applying the language of each section to the exact subject of which they are speaking in the words quoted, we find entire harmony, as well as perfect clearness, and there is no room for further criticism.

But the 3d section, in providing for a sale after default, and for a continuance of the semi-annual contributions after sale, contemplates a totally different situation. By the sale, all the property and franchises of the sold-out company, including even its charter, pass to the purchasers. The obligation of the company to contribute ceases, and devolves on the purchasers. They become bound "to continue the contribution until all the outstanding bonds of the company are discharged." The reference here is plainly to the contribution which the company ought to make before foreclosure and sale, and when all its bonds are assumed to be outstanding; and the meaning of all the sections, 2, 3 and 12, is, that as soon as a company has completed its line of road, it must commence and keep up a semi-annual payment of one-half of one per cent. into the sinking fund, on the basis of all the bonds it has issued under the Act, and when it makes default and is sold out, the purchasers must assume the same payments until *all the bonds* are extinguished.

A further observation is due in respect to the 12th section. It does not contemplate the extinction of any of the bonds of a company until the maturity and payment of all of them. It provides that the semi-annual payments into the sinking fund may be

invested in the purchase of bonds of the same company, but expressly declares that bonds so purchased shall be held as an investment on account of the fund, and that interest shall be payable upon them as before. It is very plain that the bonds so held by the fund would continue to be a part of the basis for the future contributions of one-half per cent. semi-annually. If this is true as to bonds purchased by using moneys belonging to the sinking fund, it is difficult to suggest a reason why it is not true also as to bonds purchased after a sale, by using the proceeds which may be "incorporated" with the fund, and become a part of it.

It is submitted, therefore, that the decree appealed from is erroneous, and should be reversed, &c.

THERON G. STRONG,
GEO. F. COMSTOCK,
For Appellant.

AN ACT

TO PROVIDE FOR AND ENCOURAGE A LIBERAL SYSTEM OF INTERNAL IMPROVEMENTS IN THIS STATE.

WHEREAS, The Constitution of this State declares "that a liberal system of Internal Improvements, being essential to the development of the resources of the country, shall be encouraged by the government of this State, and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law, proper objects of improvements in relation to Roads, Canals and Navigable Streams, and to provide for a suitable application of such funds as may be appropriated for such Improvements," therefore—

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That so much of the Five Hundred Thousand Acres of Land granted to this State for Internal Improvement purposes, by an Act of Congress, passed the third day of March, A. D. 1845, as remains unsold, and the proceeds of the sales of such of said lands heretofore sold as now remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sales of said lands; also all the swamp land or lands subject to overflow, granted to this State by an Act of Congress, approved September 28th, A. D. 1850, together with all the proceeds that have accrued, or may hereafter accrue to the State from the sale of said lands, are hereby set apart and declared a distinct and separate fund, to be called the Internal Improvement Fund

of the State of Florida, and are to be strictly applied according to the provisions of this Act.

SEC. 2. *Be it further enacted*, That for the purpose of assuring a proper application of said fund for the purposes herein declared, said lands and all the funds arising from the sale thereof, after paying the necessary expenses of selection, management and sale, are hereby irrevocably vested in five Trustees, to wit: in the Governor of this State, the Comptroller of Public Accounts, the State Treasurer, the Attorney General and the Register of State Lands, and their successors in office, to hold the same in trust for the uses and purposes hereinafter provided, with the power to sell and transfer said lands to the purchasers, and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time, in Stocks of the United States, Stocks of the several States, or the Internal Improvement Bonds issued under the provisions of this Act, and drawing not less than six per cent. annual interest; also, the surplus interest accruing from such investments, and to pay out of said fund, agreeably to the provisions of this Act, the interest, from time to time, as it may become due on the bonds to be issued by the different Railroad Companies under authority of this Act; also, to receive and demand, semi-annually, the sum of one-half of one per cent. (after each separate line of Railroad is completed,) on the entire amount of the bonds issued by said Railroad Company, and invest the same in Stocks of the United States, or State securities, or in the bonds herein provided to be issued by said Company. Said Trustees shall also invest the surplus interest of said sinking fund investment as it may accrue. Said Trustees shall also demand and receive from each Railroad Company named in this Act, the amount due to the Internal Improve-

ment Fund from said Railroad Company, according to the provisions herein contained, on account of interest on the bonds issued by said Company, and a refusal or neglect on the part of the President and Directors of any Railroad Company herein named to comply with the provisions of this Act, as to the payment to said Trustees of the amount due and payable to the fund, as provided in sections eleven, twelve and thirteen, on account of interest and sinking fund, the individual property of each and all the Directors shall be liable in an action of debt to said trustees for the amount due and unpaid, with 20 per cent. interest until paid.

SEC. 3. *Be it further enacted*, That all Bonds issued by any Railroad Company under the provisions of this Act, shall be recorded in the Comptroller's office, and so certified by the Comptroller, and shall be countersigned by the State Treasurer, and shall contain a certificate on the part of the Trustees of the Internal Improvement Fund that said bonds are issued agreeably to the provisions of this Act, and that the Internal Improvement Fund, for which they are Trustees, is pledged to pay the interest as it may become due on said bonds. All bonds issued by any Railroad Company under the provisions of this Act, shall be a first lien or mortgage on the road bed, iron, equipment, work-shops, depots and franchise; and upon a failure on the part of any Railroad Company accepting the provisions of this Act, to provide the interest as herein provided on the bonds issued by said Company, and the sum of one per cent. per annum as a Sinking Fund, as herein provided, it shall be the duty of the Trustees, after the expiration of thirty days from said default or refusal, to take possession of said Railroad and all its property of every kind, and advertise the same for sale at public auction to the highest bidder,

either for cash or additional approved security, as they may think most advantageous for the interest of the Internal Improvement Fund and the bondholders. The proceeds arising from such sale shall be applied by said Trustees to the purchase and cancelling of the outstanding bonds issued by said defaulting Company, or incorporated with the Sinking Fund: *Provided*, That in making such sale, it shall be conditioned that the purchasers shall be bound to continue the payment of one-half of one per cent. semi-annually to the Sinking Fund, until all the outstanding bonds are discharged, under the penalty of an annulment of the contract of purchase, and the forfeiture of the purchase money paid in.

SEC. 4. *Be it further enacted*, That a line of Railroad from the St. Johns River, at Jacksonville, and the waters of Pensacola Bay, with an extension from suitable points on said line to St. Marks River, or Crooked River, at White Bluff on Apalachicola Bay, in Middle Florida, and to the waters of St. Andrews Bay, in West Florida, and a line from Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Key, in East Florida; also a Canal from the waters of St. Johns River on Lake Harney to the waters of Indian River, are proper improvements to be aided from the Internal Improvement Fund, in manner as hereinafter provided.

SEC. 5. *Be it further enacted*, That the several Railroads now organized or chartered by the Legislature, or that may hereafter be chartered, any portion of whose routes as authorized by their different charters, and amendments thereto, shall be within the line or routes laid down in section four (4), shall have the right and privilege of constructing that part of the line embraced by their charter, on

giving notice to the Trustees of the Internal Improvement Fund of their full acceptance of the provisions of this Act, specifying the part of the route they propose to construct; and upon the refusal or neglect of any Rail·oad Company now organized to accept, within six months from the passage of this Act, the provisions of the same, any other Company, duly authorized by law, may undertake the construction of such part of the line as they may desire to make, and which may not be in progress of construction under a previous charter.

SEC. 6. *Be it further enacted*, That before any Railroad Company shall be entitled to the provisions of this Act, said Railroad Company shall first grade continuously twenty miles, according to the following specifications:

First. The line of road for sixty feet from the centre shall be cleared of all the standing timber.

Second. The grading shall be for a single track except at depots, turn-outs, and similar places, where it shall be wider if required by the State Engineer, with a road bed twenty feet wide in cuttings, with ditches from two to three and a half feet in depth below grade. with such widths as the State Engineer may direct, and eighteen feet wide on embankments, at the grade line, with slopes of one and a half feet base to one foot rise; and in all excavations and embankments, they shall be so constructed as to have a perfect drainage, and not permit any standing water to come within three feet of the lower side of the cross tie.

Third. All the cross ties shall be delivered on the line of the road, and be of heart yellow pine, cyprus, white, yellow, post, live or spanish oak, white or red

cedar, and not less than nine feet long, with not less than nine inches face, and eight inches in thickness, and shall be well and carefully bedded, and laid within two and a half feet from centre to centre.

Fourth. At all water-ways sufficient space shall be left for the unobstructed passage of water; and at all points on the line of the road where side ditches can be cut that will carry off the surface water, they shall be constructed by the Company under the direction of the State Engineer.

Fifth. In the crossing of all streams, the bridges shall be constructed according to plans approved by the State Engineer; and over all streams that are navigated, suitable draws shall be put in to admit the passage of boats or vessels usually navigating the same, to be decided by the State Engineer.

Sixth. The gauge of the different Railroads shall be uniformly five feet, and connected continuously, so that cars or trains of cars can pass on all the routes indicated, without changing freight. And it shall be the duty of the different Railroad Companies to adopt a uniform tariff for transportation of passengers and for hauling the freight in the cars of another Company, upon usual and equitable terms; and no discrimination shall be made by one Company against the freight or passengers of another Company.

Seventh. The iron rail used shall weigh not less than sixty pounds per lineal yard, and be of the best quality of iron, and well fastened to the cross ties, with the best quality of spikes and plates.

Eighth. The entire equipment shall be of the first class, and shall at all times be sufficient for the prompt transportation of all the passengers and freight ordinarily offering.

Ninth. The grade on no portion of the routes indicated by this Act shall exceed forty-five feet per mile, and no single curve shall exceed three degrees of curvature, or be adopted unless approved of by the State Engineer.

SEC. 7. *Be it further enacted*, That after any Railroad Company shall have graded twenty miles of road-bed continuously, and furnished the cross ties, agreeably to the specifications of this Act, and shall give notice to the State Engineer, it shall be his duty to examine personally said section of twenty miles, and if, after full examination, he shall approve the construction of said twenty miles, then it shall be his duty to certify the same to the trustees of the Internal Improvement Fund; and on the completion of the grading and furnishing of the cross ties of each additional ten miles continuously, the State Engineer shall also examine the same, and if constructed in accordance with the provisions of this Act, shall certify the same to the trustees of the Internal improvement Fund.

SEC. 8. *Be it further enacted*, That on the completion of the grading and the furnishing of the cross ties of twenty miles continuously, and every additional ten miles, as provided by this Act, said Railroad Company are hereby authorized to issue Coupon Bonds, having not more than thirty-five years to run, and drawing not more than seven per cent. annual interest, payable semi-annually in the City of New York or Tallahassee, at the option of the purchaser, at the rate of Eight Thousand Dollars per mile for the purchase and delivery of the iron rail, spikes, plates and chairs, and after the rail has been laid down on the line, the additional sum of Two Thousand Dollars per mile, for the purchase of the necessary equipments; and said bonds shall

always afterwards constitute and be a first lien or mortgage upon the road-bed, equipment, work-shops, depots and franchise.

SEC. 9. *Be it further enacted*, That it shall be the duty of said Railroad Company to deposit said bonds with the Comptroller of Public Accounts, to be by him recorded, and the record certified on each bond; and the State Treasurer shall enter, in a book to be kept for the purpose, the amount of each bond with the rate of interest, the time it becomes due, and the place where the principal and interest is payable, and shall countersign the same; and it shall also be the duty of the Trustees of the Internal Improvement Fund, after having received a certificate from the State Engineer, that twenty miles, or ten miles, as the case may be, have been graded in all respects agreeably to the specifications of this Act, to sign said bonds agreeably to the provisions of this Act, and deliver them to the said Railroad Company: *Provided*, The President and at least four of the Directors, file with the Trustees of the Internal Improvement Fund, a statement under oath, that the necessary quantity or quality of iron for said twenty or ten miles, as the case may be, has been purchased, and is within the jurisdiction of this State, and paid for, or to be paid for, with said bonds or their proceeds: *Provided, further*, That before said Trustees shall deliver to said Railroad Company the said bonds, said Company shall deposit with the Trustees of the Internal Improvement Fund, the first semi-annual installment of interest on the amount of bonds certified to by said Trustees, to meet the same when due, (or they shall retain the Coupons for the first semi-annual interest,) and shall give to the Trustees of the Internal Improvement Fund a bond with approved security, that said quantity or quality of iron shall be laid

down on the line of their road within six months after the said bonds are issued.

SEC. 10. *Be it further enacted*, That any Railroad Company receiving said certified bonds, shall apply the same or their proceeds to no other purpose than purchasing the iron rail, spikes, plates, or equipments; and before any additional bonds shall be certified by the Trustees of the Internal Improvement Fund, the iron rail shall be laid on that part of the route for which the bonds were issued, and so on continuously until the line is completed.

SEC. 11. *Be it further enacted*, That it shall be the duty of the President and Directors of every Railroad Company accepting the provisions of this Act, while the road is under construction, to report to the Trustees of the Internal Improvement Fund every six months, under the oath of the President and at least two of the Directors, the gross receipts of said Company from the traffic of the road for the past six months, the cost of transportation and repairs, and the total amount of the net receipts of said Company; and it shall be the duty of the President and Directors to pay to the Trustees of the Internal Improvement Fund, fifty per cent. of said net receipts, every six months, which sum or sums shall be applied by the Trustees of the Internal Improvement Fund towards the payment of the interest of any bonds issued by said Company.

SEC. 12. *Be it further enacted*, That every Railroad Company accepting the provisions of this Act shall, after the completion of the road, pay to the Trustees of the Internal Improvement Fund at least one-half of one per cent. on the amount of indebtedness or bond account, every six months, as a Sinking Fund, to be invested by them in the class of securities named in section two, or to be applied to

the purchase of the outstanding bonds of the Company; but it shall be distinctly understood that the purchase of said bonds shall not relieve the Company from paying the interest on the same, they being held by the Trustees as an investment on account of the Sinking Fund.

SEC. 13. *Be it further enacted*, That if, on completion of any of the roads indicated in section four, the net earnings should be less than six per cent. on the capital stock paid in and bonded debt of said Company, first deducting the one per cent. per annum paid in to the Sinking Fund, it shall be divided *pro rata* between the stock account paid in and bonded debt, and the Internal Improvement Fund shall pay the deficiency due on account of interest, from time to time, as it may fall due. In the event the net earnings are over six per cent. on the capital stock paid in and bonded debt and sinking fund of one per cent., then the President and Directors shall first pay into the hands of the Trustees of the Internal Improvemnt Fund the amount due on the interest account of the bonded debt, in addition to the provision for the Sinking Fund, every six months.

SEC. 14. *Be it further enacted*, That for all payment made by the Trustees of the Internal Improvement Fund on account of interest for any Railroad Company, agreeably to the provisions of this Act, said Trustees shall demand and receive from said Railroad Company equal amounts of the capital stock of said company, which stock shall entitle the Internal Improvement Fund to all the privileges and advantages of private Stockholders.

SEC. 15. *Be it further enacted*, That on the routes indicated for the construction of the different lines

of Railroad, the State hereby grants to each of the different Companies that may hereafter construct portions of such line or route, the alternate sections of State lands on each side for six miles, but the title to the same shall not vest in the Company except as the road progresses, and not until thirty miles are completed, when the Company may sell one half of the same within said thirty miles; and on the completion of thirty additional miles, then they may sell the balance of their lands remaining unsold in the first thirty miles, and so on for each division of thirty miles until the road is completed.

SEC. 16. *Be it further enacted*, That the Trustees of the Internal Improvement Fund shall hereafter fix the price of the public lands included in the trust, having due regard to their location, value for agricultural purposes, or on account of timber or naval stores, and make such arrangements for drainage of the swamp and overflowed lands as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the land; and the said Trustees shall encourage actual settlement and cultivation of said lands by allowing pre-emptions under such rules and regulations as they may deem advisable: *Provided*, That in no case shall a pre-emption for more than one section of land be granted to any one settler.

SEC. 17. *Be it further enacted*, That as the Board of Internal Improvement recommend the construction of a navigable canal connecting the waters of the St. Johns with those of Indian river, the State Engineer is hereby authorized to make a final location of the same as soon as practicable, and furnish detailed estimates and plans for the information of persons desirous of engaging in the work, and

invite bids for its execution for one year—the bidders to specify the amount for which they will do the work, and the mode and manner in which payments are to be made, whether in lands or money, or in portions of each. And the Trustees of the Internal Improvement Fund are hereby authorized to pay out of said Fund, as the work progresses, the whole amount agreed upon by the terms of the contract: *Provided*, The entire cost shall not exceed Four Thousand Dollars in money, and Four Thousand acres of land per mile: *Provided, further*, That the Trustees of the Internal Improvement shall be of the opinion that this sum in money can be applied to said purpose without impairing the efficiency of the fund for railroad purposes.

SEC. 18. *Be it further enacted*, That the capital stock of any Railroad Company accepting the provisions of this Act, shall be forever exempt from taxation, and the roads, their fixtures and appurtenances, including work-shops, ware-houses, vehicles and property of every description needed for the purpose of transportation of freight and passengers, or for the repair and maintenance of the roads, shall be exempt from taxation while the roads are under construction, and for the period of thirty-five years from their completion; and that all the officers of the Companies, and servants, and persons in the actual employment of the Companies, be and are hereby exempt from performing ordinary patrol or militia duty, working on public roads, and serving as jurors.

SEC. 19. *Be it further enacted*, That should any of the officers or persons in the employ of any Railroad Company in this State make any fraudulent statement of accounts, or make false issues or transfers of the capital stock or bonds of any Rail-

road Company, or shall fraudulently apply any money or property in his charge, belonging to said Company, or in charge of said Company, to his individual use or benefit, or to the benefit of any other person, it shall be considered a felony, and, on conviction, in any Court having jurisdiction of the same, shall be punished by fine at the discretion of the Court, and imprisonment of not less than two nor more than ten years.

SEC. 20. *Be it further enacted*, That after the routes indicated have been actually surveyed and adopted, and a plat thereof deposited in the office of the Secretary of State, it shall not be lawful for any other Railroad to be built, cut, or constructed in any way or manner, or by any authority whatsoever, running laterally within twenty five miles of the route so adopted, unless by said Company, or with the consent of the Trustees of the Internal Improvement Fund and a majority of the Stockholders, at an annual meeting, on a stock vote.

SEC. 21. *Be it further enacted*, That should the Government of the United States grant land to the State of Florida, for the purpose of aiding in the construction of the lines of Railroad indicated, and their extensions, by general or special act, said lines of Railroad shall be entitled to all the benefits and advantages arising from said grant that the State of Florida would be entitled to by the construction of said lines of Railway and their extensions; and the Governor of the State is hereby authorized and required, should such an Act be passed by the Government of the United States, to direct said Railroad Companies to select said land, and, after such selection, to give the Secretary of the Interior notice of such selection, and furnish him with a list of land so selected, the number of each section,

fractional section, or sub-division, and take such other action as may be necessary to fully secure the grant of lands to said Railroad Companies, subject to all the conditions and restrictions of the Act of Congress making such grant.

SEC. 22. *Be it further enacted*, That it shall be lawful for the Board of County Commissioners of any county, or the Mayor and Council of any city, or the Trustees of any town, through or near which such Railroads or their extensions may pass, or in which they may terminate, and they are hereby authorized to subscribe and hold stock in said Company, upon the same terms and conditions, and subject to the same restrictions as other Stockholders: *Provided*, It shall be first submitted to the vote of the legal voters of said county, city or town, to be held and taken at such times and places, and in such a manner, as said authorites respectively may appoint, whether or not stock shall be subscribed and taken; and if, when the vote be thus taken, it shall appear that a majority of the votes shall be in favor of such subscription, it shall thereupon be lawful for the Board of County Commissioners, City or Town authorities, by agents by them appointed, to subscribe and take in such Company, such an amount of stock as they shall determine: *Provided*, That in no case of county subscription the amount shall exceed fifty per cent. of the cost of construction through said county; and to issue the bonds of such county, city or town, payable with interest at such times and places as they may deem proper, and dispose of the same for the payment of such subscription, pledging the faith and resources of such county, city or town for the payment of such bonds and interest; and they shall, from time to time, levy and collect such a tax as shall be necessary to pay the installments of interest and the

bonds, as the same become due, or to create a Sinking Fund for the gradual reduction of the same: *Provided*, That the rate of interest shall not exceed ten per centum per annum, or funds may be raised by such Board of County Commissioners or City or Town authorities, by tax, in such sums or installments as will meet such subscription, and the receipt for the payment of such tax shall entitle the payers thereof, for every One Hundred Dollars so paid, to have one share or more, as the case may be, of the stock so subscribed by said County Commissioners, city or town, in said Company, and which receipts shall be assignable. No stock held by any county, city or town, shall be assignable by said county, city or town, until the bonds issued for the purpose of procuring funds for the payment of said county city or town subscription shall be paid except in exchange for such bonds.

SEC. 23. *Be it further enacted*, That in the event of the disagreement between any Railroad Company accepting the provisions of this Act, and the Post-master General as to the compensation to be paid per mile by the Government of the United States to said Companies for transporting the mail of the United States, on the routes indicate : by this Act, the matter shall be settled by mutual agreement between the Post-master General and the Governor of the State ; and the refusal on the part of any Railroad Company to perform the services required by the Post-office Department, for the compensation agreed on by the Governor and the Post-master General, shall subject said Company to a fine of one hundred dollars for each and every day they refuse to perform the said award, which shall be recoverable by an action of debt by the Post-master General, but not if he be in arrears for more than one quarter's compensation to such Company.

SEC. 24. *Be it further enacted*, That no branch roads from the main line of Railroad, provided for by this act, between the waters of Pensacola or Escambia Bay and the junction with the Florida Railroad shall be made to the Northern boundary line of this State, until that part of the line between the Suwannee river and the Florida Railroad has been constructed ; nor shall any such branch road be made to a point West of the Alapaha river without the consent of all the Companies owning the several portions of the main line, and without the approval of the Trustees of the Internal Improvement Fund.

SEC. 25. *Be it further enacted*, That the completed portion of any Railroad authorized by this Act, shall carry the iron rails, spikes and plates, or chairs required in the construction of any portion of the line indicated, at the uniform rate of two cents per ton per mile, and for such transportation shall receive in payment the capital stock of the Company for which the same was transported.

SEC. 26. *Be it further enacted*, That whenever any of the different Railroad Companies shall purchase and deliver to the County Treasurer, or to the City or Town authorites, the bonds issued by any county, city or town, to pay the subscription of the capital stock of said county, city or town, or any portion of them, the Treasurer of said county, city or town shall transfer an equal amount of the capital stock of said Company to said Railroad Company, and it shall be the duty of the Treasurer of the county, city or town authorities to cancel and deface the bonds exchanged.

SEC. 27. *Be it further enacted*, That after the Railroad Companies indicated by the provisions of this Act shall, for five consecutive years, pay six

per cent. on the capital stock paid in, and the interest on the bonded debt, and apply the sum of one per cent. yearly to a Sinking Fund on said debt, then the Trustees of the Internal Improvement Fund may apply, under the direction of the Legislature, the annual income arising from said fund to other purposes of Internal Improvement, or to the support of schools, so long as the said Company shall continue to pay the same. But should any of said Railroad Companies thereafter fail to provide the interest upon their bonded debt, and one per cent. annually as a Sinking Fund, then said fund shall pay the deficiency on the interest account, from time to time, as it may arise.

SEC. 28. *Be it further enacted*, That the right of way through the State lands for two hundred feet in width, is hereby granted to the different Railroad Companies on the routes indicated, with the right to cut timber and procure the necessary earth and stone from the adjacent land, to construct and repair the same, and whenever it is necessary to construct turn-outs or side-tracks, that this privilege may be extended to one hundred feet on each side of the road, and of such side track.

SEC. 29. *Be it further enacted*, That the alternate sections of the swamp and overflowed lands, for six miles on each side, may be granted by the General Assembly to such Railroad Companies, to be hereafter chartered, as they may deem proper, on their compliance with the provisions of this Act, as to the manner of constructing the road and drainage, and the sale and transfer of the alternate sections thus granted, shall be in accordance with the provisions of this Act.

SEC. 30. *Be it further enacted*, That no bonds shall be issued to the Companies under the pro-

visions of this Act in aid of any part of their road not completed at the end of eight years from the passage of this Act, and any Company failing to grade twenty miles of their road within four years from filing notice of their acceptance of the terms of this Act, shall forfeit all rights to its benefits.

SEC. 31. *Be it further enacted*, That in addition to the bonds authorized to be issued in the preceding sections of this Act, there may be issued by the proper Railroad Companies bonds to the amount of One Hundred Thousand Dollars for a bridge crossing the Choctawhatchie river, and the like amount for a bridge crossing the Apalachicola river; also One Hundred Thousand Dollars for the structures necessary to cross from the West side of Nassau river to Amelia Island, and Fifty Thousand Dollars for the crossing of the Suwannee river—which bonds shall be guaranteed and provided for in the same manner as those hereinbefore authorized: *Provided*, That said bonds shall not issue except in payment for work done, and then only as the work progresses upon the certificate of the State Engineer that such work has been done, and that the amount of bonds issued is required for the payment therefor.

SEC. 32. *Be it further enacted*, That if any person shall, while in charge of a locomotive engine, or acting as the Conductor or Superintendent of a car or train of cars, or on the car or train as a Brakeman, or employed to attend the switches, drawbridges or signal stations on any Railway in this State, be intoxicated, he shall be deemed guilty of a misdemeanor, and upon conviction before any Magistrate, shall be punished by fine or imprisonment, at the discretion of the Court.

Passed the House of Representatives December 29, 1854. Passed the Senate January 2, 1855. Approved by the Governor January 6, 1855.

per cent. on the capital stock paid in, and the interest on the bonded debt, and apply the sum of one per cent. yearly to a Sinking Fund on said debt, then the Trustees of the Internal Improvement Fund may apply, under the direction of the Legislature, the annual income arising from said fund to other purposes of Internal Improvement, or to the support of schools, so long as the said Company shall continue to pay the same. But should any of said Railroad Companies thereafter fail to provide the interest upon their bonded debt, and one per cent. annually as a Sinking Fund, then said fund shall pay the deficiency on the interest account, from time to time, as it may arise.

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SEC. 29. *Be it further enacted*, That the alternate sections of the swamp and overflowed lands, for six miles on each side, may be granted by the General Assembly to such Railroad Companies, to be hereafter chartered, as they may deem proper, on their compliance with the provisions of this Act, as to the manner of constructing the road and drainage, and the sale and transfer of the alternate sections thus granted, shall be in accordance with the provisions of this Act.

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SEC. 32. *Be it further enacted*, That if any person shall, while in charge of a locomotive engine, or acting as the Conductor or Superintendent of a car or train of cars, or on the car or train as a Brakeman, or employed to attend the switches, drawbridges or signal stations on any Railway in this State, be intoxicated, he shall be deemed guilty of a misdemeanor, and upon conviction before any Magistrate, shall be punished by fine or imprisonment, at the discretion of the Court.

Passed the House of Representatives December 29, 1854. Passed the Senate January 2, 1855. Approved by the Governor January 6, 1855.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 124.

ARISTIDES DOGGETT, RECEIVER,

vs.

THE FLORIDA RAILROAD COMPANY.

Supplemental Brief on the part of Appellant.

So entirely did the case turn on the interpretation of the Internal Improvement Act in the court below that it did not occur to the learned counsel who prepared the original brief for the appellant to notice any of the grounds of demurrer but the one alleging a want of equity in the bill, which the court below sustained, on the ground that the bill proceeded on a mistaken view of the statute. (Rec., pp. 56, 57.) But, inasmuch as all the grounds of the demurrer are pressed here by the learned counsel for the appellee, we submit, in reply to what is said in his brief (pp. 4, 5, 6,) on those other grounds of demurrer, which are all outside the merits of the case;—

First.

It can hardly be tenable that the court had no jurisdiction to entertain a bill filed by the receiver *and the*

two aggrieved creditors whom he represented. To constitute *misjoinder* there must be an incongruous association of parties, but surely nothing of that sort can be predicated of the association of receiver and creditors in this bill.

Granting, for the sake of the argument, that the trustees of the internal improvement fund and, then, the receiver were entitled to represent the creditors, it comes to this only, that such a representation of the interests involved was enough to warrant the court in decreeing on the merits; but was it ever laid down that the joinder of two or three parties with the person or persons who represented them was a misjoinder and fatal to the jurisdiction? A tenant in tail has the fee, potentially, but was it ever held a misjoinder to unite with him as a party the reversioner in fee because he is fully represented by the donee in tail? We submit that such a doctrine is at war with the liberal and expansive principles of procedure in equity.

But, really, the point has no practical value, because the bill was, to all intents, *dismissed as to Vose and Wagner*, for, before the hearing, the complainants solicitors moved for leave to amend the bill by striking out the names of Vose and Wagner (Rec., p. 55), which motion the court virtually allowed by granting an appeal to the receiver alone, ignoring the other complainants in the order allowing the appeal. (Rec., p. 57.)

Second.

The jurisdiction is also assailed on the ground that the receiver had no right to sue in his own name, there being no special authority to him to do so in the order which was his warrant for filing the bill.

The authorities are not at one on this question, and it does not appear that this Court has ever decided that a receiver cannot sue in his own name, without special

authority to do so. But, we submit that this point, like the preceding one, has no practical value, because the Court, in decreeing on *the merits of the bill*, necessarily admitted the receiver's right, which was tantamount to a grant of authority, *it being the same Court as had jurisdiction of the cause in which the receiver was appointed.*. The objection is merely *formal*, as it cannot be successfully maintained that an interlocutory order authorizing a receiver to sue in his own name, operates a transfer to him of title in the subject matter of the projected suit. Generally, where authority to sue in his own name is granted a receiver, it gives him *the option* to sue in the name of some party to the cause or *otherwise*, as was the case in *Davis* vs. *Gray*, (16 Wall., 203.)

But, however valid this objection might be in a case where the receiver sues in a Court other than that from which he derives his powers, it has no force where he sues in the latter court, and, especially, where that court, as here, dismisses his bill for the *want of equity* in the face of a ground of demurrer, that he was not empowered to sue in his own name.

Third.

The objection that there is no averment of citizenship in the bill, and the further objection, to cut off amendment of the bill in this particular, that the record shows that the complainant and defendant are citizens of the State of Florida, has no relevancy, we submit, because this suit is not an *original* suit. It is entirely derivative and ancillary. It is the mere outcome and fruit of the suit in which the receiver was appointed, which is a suit of which the court has undoubted jurisdiction. (Rec. p. 6.)

It is true the courts of the United States are courts of limited jurisdiction, but they are not inferior courts.

They are armed with plenary power to make their jurisdiction effective, and when to that end it is necessary to institute a suit or proceeding as to a matter which is the outgrowth of some other suit in which the court has jurisdiction, such suit will be entertained irrespective of the citizenship of the parties to it. It shall never be said that a court of the United States breeds a suit to be determined by another forum. Now, as we have seen, this suit is in the same court as has jurisdiction of the suit in which the receiver was appointed, and it cannot be that its jurisdiction in that suit is so stinted as that it must resort to a State court to enable its receiver, who is but its hand, to grasp the property of which it must have control in order to give the relief prayed for in the original suit. This position is sustained by numerous authorities.

Dunn vs. *Clarke*, 8 Pet., 1.
Freeman vs. *Howe*, 24 How., 460.
Jones vs. *Andrews*, 10 Wall., 327.
Reilly vs. *Golding*, 10 Wall., 56.
Railroad Co. vs. *Chamberlain*, 6 Wall., 748.
Gwin vs. *Breedlove*, 2 How., 29.
Bobyshall vs. *Oppenheimer*, 4 W. C. C., 482.

Fifth.

The objection that if the receiver is entitled to any relief it is *at law*, and not in equity, is not tenable, we respectfully submit. In supporting this objection the learned counsel seem to lose sight of the third and eighth sections of the internal improvement act, which make the bonds issued under the act "a first lien or mortgage," the 3d section providing that on failure of any railway company accepting the act to provide the interest on its bonds as well as the annual payment of one per centum, it shall

be the duty of the trustees to take possession of such railroad and sell the same, the enforcement of which lien is one of the objects of the bill in this suit.

Now if equity has not jurisdiction to enforce this lien, especially in view of the refusal of the trustees to do so, it is difficult to see how it has jurisdiction in any suit for a foreclosure.

The objection that the bond holders could sue at law, if tenable in this case, would apply with the same force to any suit for the foreclosure of a mortgage, it being always competent for the mortgagee to sue at law. So far, however, from this being any ground of objection, it is familiar law that a mortgagee may sue at law and at the same time carry on a foreclosure suit in equity to enforce the collection of one and the same debt.

Assignment of Error.

The error complained of is that the court below sustained the demurrer to the bill and dismissed the same.

P. PHILLIPS,
WM. A. MAURY,
For Appellant.

IN THE

Supreme Court of the U. S.

October Term, 1878.

No. 124.

ARISTIDES DOGGETT, RECEIVER,

vs.

THE FLORIDA RAILROAD COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Florida.

WM. M. MERRICK,
Solicitor for Appellee.

Murphy & Co., Printers & Stationers, 182 Baltimore street, Baltimore.

In the Supreme Court of United States.

October Term, 1878.

No. 124.

ARISTIDES DOGGETT, Receiver,

vs.

THE FLORIDA RAILROAD COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Florida.

BRIEF FOR APPELLEE.

A bill was filed in the Circuit Court by Francis Vose of New York against the Trustees of the Internal Improvement Fund of Florida, alleging various acts of neglect of duty and malversation in the administration of their public trust, which, after divers proceedings, was brought to a hearing and decree, and amongst other things, the decree provided for the appointment of the appellant as Receiver and authorized him "to demand and receive all monies which may be already due, or which may hereafter become due, to the Internal Improvement Fund of Florida, whether by the purchasers and present owners of the railroads which have been sold under the provisions of the Act of 1855, or by any person or body corporate whatsoever, and that it shall be competent for him to make any person or body corporate, who shall contest the validity of any claim which he may assert by virtue of this decree, a party defendant to this

suit, for the purpose of enforcing the collection of such claim, should the same be adjudged valid," &c. (See that bill at p. 6, and that decree at p. 50, printed Record.) That decree was passed on the 8th of December, 1872. On the 20th of December, 1872, the said complainant, one William H. Wagner and Mr. Doggett, the Receiver, filed the bill, now before this Court, for the purpose of compelling the Florida Railroad Company to pay to said Receiver the one-half of one per cent. semi-annual, which it alleged to be in arrear upon all the bonds originally issued by the road under authority of the Internal Improvement law of Florida. On the face of the bill, Francis Vose is averred to be the holder of one hundred and ninety-five of such bonds and said Wagner to be the holder of twelve such bonds, and the bill purports to be brought as well for them as for all other holders of similar bonds. It appears from the face of the bill that there are but two hundred and twenty-eight of such bonds altogether now outstanding, and it is admitted that the appellee is paying, or prepared to pay regularly the proper percentage upon them. But it is alleged that the appellee is bound to pay that percentage upon all the bonds which were originally issued. It appears from the bill that, by proper proceedings under the laws of Florida, said railroad was sold by the Trustees, and, with the proceeds of sale, all of the bonds, except the two hundred and twenty-eight, were purchased by said Trustees with the proceeds of sale and cancelled under the law, and the present purchasers of the road maintain that they are required to pay only upon those bonds which are outstanding, and not upon those of the original issue, which have been purchased and cancelled. A demurrer was filed to the bill by the appellee, (see p. 53 of Record.)

First—For want of equity on the face of the bill.

Second—For misjoinder of parties. Because Vose & Wagner, as creditors, have no standing, to be united as complainants with the Receiver in any suit, to recover from the respondent any debt due to the fund in the custody of the Receiver.

Third—That the Receiver was not authorized to commence a suit in his own name.

Fourth—That the Receiver is a citizen of Florida, the same State of which appellee is citizen, and, therefore, a Circuit Court of the United States has no jurisdiction between such parties.

Fifth—That the remedy, if any, is complete by action at law in the Courts of the State where both parties reside.

The Court below sustained the demurrer and dismissed the bill, and gave leave to the Receiver to appeal for himself alone.

The provisions of law under which the supposed claim of the appellant arise, are to be found in the Internal Improvement laws of Florida, contained in Burke's Digest, as follows: Section 8, p. 370, among other things, provides that the Trustees shall "receive and demand, semi-annually, the sum of one-half of one per cent. (after each separate line of railroad is completed) on the entire amount of the bonds issued by said Railroad Company and invest the same in stocks of the United States or State securities, or in the bonds herein provided to be issued by said Company."

Section 9, p. 371, "that upon failure on the part of any railroad to provide the interest on the bonds issued by the Company, and the sum of one per cent. per annum as a sinking fund. .... it shall be the duty of the trustees, after the expiration of thirty days from said default or refusal, to take possession of said railroad and all its property of every kind and advertise the same for sale at public auction to the highest bidder, either for cash, or additional approved security, as they may think most advantageous for the interest of the Internal Improvement Fund and the bondholders. The proceeds arising from such sale shall be applied by said trustees to the *purchase and cancelling* of the outstanding bonds issued by said defaulting company, or incorporated with the sinking fund. Provided that in making such sale it shall be conditioned that the purchasers shall be bound to continue the payment of one-half of one per

cent. semi annually to the sinking fund, until all the outstanding bonds are discharged, under the penalty of an annulment of the contract of purchase and the forfeiture of the purchase money paid in."

The 18th section at p. 374, says: "Every railroad company accepting the provisions of this act shall, after the completion of the road, pay to the trustees of the Internal Improvement Fund at least, one-half of one per cent. on the amount of indebtedness, or bond account, every six months, as a sinking fund, to be invested by them in the class of securities named in section two, or to be applied to the purchase of the outstanding bonds of the Company; but it shall be distinctly understood that the purchase of said bonds shall not release the Company from paying the interest on the same, they being held by the trustees as an an investment on account of the sinking fund."

Upon the foregoing state of facts and under the provisions and true interpretation of the above quoted statute, the appellees in support of the decree below dismissing the bill will contend

"On the Question of Jurisdiction."

1st. That the bond creditors of the railroad were neither proper nor necessary parties to a proceeding by the Receiver against any debtor to the Internal Improvement Fund. The Trustees of the Internal Improvement Fund were their full legal representatives and by the act of the Court, the Receiver stood in the place of the Trustees.

Gray, Receiver vs. Davis et. al., 1st Woods, C. C. Rep., p. 427.
Same case, 16 Wallace, 203.

2d. The Receiver has in no case power to sue in his own name, unless authorized specifically so to do by the decree appointing him, but must sue in the name of the party having title to the subject matter; and in this case there was no delegation of power to the Receiver to sue in his own name. The terms

of the power in this case were "*to sue for and receive the same.*" The natural import of this delegation of power is that he is to use the name of the legal and equitable owner in all suits.

High on Receivers, sec. 209.
Kerr on Receivers, p. 192, note 1.
Booth vs. Clark, 17 Wallace, 331.
Yunger vs. Wallace, 44 Pa. State, 294.
Gray vs. Davis, 16 Wallace, 218.
2d Story's Equity, sec. 833.

3d. There is no averment whatever in the bill in this case as to the citizenship of the complainant, the Receiver. The fact is, that he is a citizen of Florida, the same State of which the respondent is a citizen. The Trustees also, on whose behalf the suit is brought, and in whose name it should technically have been brought, are all citizens of the same State. But the demurrer alleges in the assignment of causes that the Receiver is a citizen of Florida, so that it sufficiently appears from the Record that the jurisdiction fails in respect of parties. See 12 Peters, 59, Bradstreet vs. Thomas, where this Court held the averment of citizenship in a joinder in demurrer was sufficient to sustain jurisdiction. *A fortiori* the averment by respondent in assigning causes of demurrer of the want of proper citizenship to support jurisdiction, which is admitted by the joinder in the demurrer of the complainants, is a sufficient shewing of the fact.

4th. The appointment of a Receiver by a Federal Court cannot confer a right to sue in such Court. The right must be derived from statutes passed in pursuance of the Constitution. No judicial order can enlarge the faculties of suing which the Legislature alone can confer within the limitations of the Federal Constitution. In this case the representative as well as the parties whom he represents, the Trustees of the Internal Improvement Fund, is a citizen of Florida, and, as such, has no standing in a Federal Court against a corporation citizen of the same State.

5th. Assuming that the complainant has a remedy for the cause complained of in his bill, that remedy is clearly by an action at law upon the statutory obligation to pay. There is nothing in the case made by the bill to draw the jurisdiction into equity under any pretext of accounting. The numbers, dates and amounts of the bonds of the company are by the statute made matter of record, and no possible difficulty could exist in framing an action of debt and recovering in debt thereon, if the cause of action were maintainable, as alleged in the bill.

6th. The rule is well settled that when a receiver sues for any cause of action, he must proceed against the party liable, by suit in the ordinary way.

Davis vs. Gray, 16 Wallace, at p. 218.

On the Merits of the Case.

7th. The Court below, in its opinion construing together the three sections of the Florida law hereinbefore recited, reached the conclusion which we submit to be the correct one: that in the contingency of a sale of any railroad for default of paying the one per cent. annually into the sinking fund, the obligations of the parties may be varied by the exercise of the discretion reposed in the Trustees by the 9th section above quoted, which discretion is either to purchase with the proceeds of sale and cancel the bonds, or to incorporate the proceeds of sale with the sinking fund. Now this alternative is certainly a different alternative from that provided by those sections relating to roads not sold for default. In the latter case, the payments into the Internal Improvement Fund are fixed, definite and regular and so calculated that at a certain ascertained period the bonds issued to the Company shall at once be liquidated; but in the case of a sale of any road for default, there is an immediate fund, in gross, realized and which if, in every case, invested in the sinking fund, might, and would, swell

it beyond the exigencies for which it was created, and at too early a period for a forced redemption of the bonds. Hence, in the latter case, the disposition is properly confided to the Trustees, either to purchase and *cancel* or to invest the proceeds of sale in the sinking fund. If they purchase and cancel, the benefit of all the sinking fund provisions, with respect to those bonds still outstanding and not cancelled, remains entirely unimpaired. The provisions for their redemption at maturity remains complete and perfect as before. Now, in the case of the purchase of bonds of the Company by the Trustees of the fund in the ordinary way, there is no additional burden thrown upon the Company. The fund can only be accumulated steadily and ratably, and there is no hardship upon the Company, whether its bonds are held as an investment or purchase by the Trustees or by any other parties. Besides the law expressly provides, that upon such a purchase the investment shall be for the benefit of the sinking fund, and shall be held as part of that fund. In the former case, however, the law provides, as we have said, the express alternative of purchasing and cancelling, or of investing in the sinking fund. They might purchase and invest in the sinking fund without cancelling. But if they purchase and *cancel*, they cannot invest in the sinking fund, for the latter power is antithetical to the former under the terms of the 9th section as applied to the road which has been sold for default. If, then, the law has, for purposes of its own, and the policy of which is obvious, conferred upon the Trustees a discretion, and they have exercised that discretion, whether wisely or not in the given instance, a judicial tribunal has no power to arrest the consequences of the act. It being admitted by the bill that the Trustees have exercised the power given by the law and cancelled all the bonds with the proceeds of sale of the road, except two hundred and twenty-eight yet outstanding, and that upon the latter the road pays, or is prepared to pay regularly, its one per cent., and thereby they will be redeemed at maturity according to the terms of their

obligation, what equity is there in straining the law by judicial construction, as well beyond its equities as beyond its letter and spirit. Why should the road be required to pay a percentage upon one thousand six hundred and eighteen bonds, (see p. 4 of Record for statement of gross amount) when one thousand, three hundred and eighty-eight have been cancelled by public authority.

Besides these considerations it is matter of grave inquiry whether a court of justice ought to interfere at all, or continue to interfere through a chancery receiver with the administration of a trust appertaining to the political department of the State of Florida.

The Trustees now in charge are different from those who were in charge of the fund at the time the Receiver in this case was appointed. (See the statute of Florida at large already in part quoted.) They have ample powers under the law; which properly should be left to the construction of the State tribunals; who can administer a more effective remedy than this Court can administer. They have the power, if the law be, as contended for by appellant, under the 9th section, to annul the contract of sale, to forfeit all the purchase money already paid in and to order a re-sale for the purpose of enforcing the payment of the proper per centages which may be due.

It is therefore submitted upon the whole case, as well upon the question of jurisdiction, as upon the merits and true construction of the statutes of Florida and the inappropriateness of the remedy sought by this bill, that the decree below should not be disturbed, by which the bill was ordered to be dismissed.

WM. M. MERRICK,
Solicitor for Appellee.

Opinion of the Court

United States Circuit Court,

FIFTH JUDICIAL CIRCUIT, NORTHERN DISTRICT OF FLORIDA.

FRANCIS VOSE ET AL.

VS.

THE FLORIDA RAILROAD COMPANY.

124

Bill in Equity.

The questions in this case come before the court upon a demurrer to the bill for want of equity, and for want of jurisdiction from misjoinder of parties, and as shown upon the face of the bill.

The object of the bill is to recover of the defendant the one-half of one per cent., semi-annually, upon the bonds issued by the defendant, and purchased and canceled by the trustees of the internal improvement fund, with the proceeds of the sale of said railroad, made by the said trustees.

It is admitted that the purchasers of the road, at that sale, have paid the one-half of one per cent., semi-annually, upon the bonds remaining uncanceled, amounting to two hundred and twenty-eight since said sale; but it is contended that this defendant is also liable to pay to the said trustees, as a sinking fund, one-half of one per cent. upon the balance of

the entire original issue of the first mortgage bonds. The warrant for such payment is alleged to be found in the act of the General Assembly of the State of Florida, entitled an act to provide for and encourage a liberal system of internal improvements in this State, approved January 6th, 1855.

The second section of that act provides, that the trustees therein created shall receive and demand, semi-annually, the sum of one-half of one per cent. on the entire amount of the bonds issued by the said railroad company.

The third section provides, that upon the failure of the railroad to pay the interest upon the bonds and the sum of one per cent. per annum as a sinking fund, it shall be the duty of the trustees, after the expiration of thirty days from default, to seize and sell said road—the proceeds of sale to be applied to the purchase and cancellation of the *outstanding* bonds, issued by said company, or incorporated with the sinking fund. And the said section also provides, that the purchaser, at such sale, shall be bound to *continue* the payment of one-half of one per cent., semi-annually, to the sinking fund until all the *outstanding* bonds are discharged. The twelfth section provides, that after the completion of a road the company shall pay to the trustees of the internal inprovement fund at least one-half of one per cent. *on the amount of indebtedness* or bond account every six months, as a sinking fund, to be invested by them in the class of securities named in section two, or to be applied to the purchase of the outstanding bonds of the company; but it shall be distinctly understood that the purchase of

said bonds shall not relieve the company from paying the interest on the same, they being held by the trustees as an investment on account of the sinking fund.

In order to determine what was the intention of the law-making power the three sections above mentioned must be construed together. When the various clauses of the said sections are properly collected the intentions of the legislature may be fairly, and I think clearly, deduced. The second section of said act invests the trustees with power to receive and demand, semi-annually, the sum of one-half of one per cent. (after each separate line of railroad is completed) on the *entire* amount of bonds issued by said railroad company, and invest the same, &c. This clause defines the *power* and *duty* of the trustees with regard to the semi-annual collection of one-half of one per cent. upon bonds issued by any railroad company.

The twelfth section defines the duty of the railroad company and requires payment of one-half of one per cent., semi-annually, on the amount of indebtedness, or bond account, which means indebtedness on bond account.

The third section provides, that upon a failure, on the part of any railroad company to pay the sum of one per cent. per annum as a sinking fund, it shall be the duty of the trustees, after thirty days from such default, to seize and sell the road and all its property for cash or additional approved security. If sold for cash the proceeds to be applied to the purchase and canceling of outstanding bonds of said company, or to be incorporated with the sinking fund; provided, that in making such sale it shall be conditioned that